

## Customs & International Trade

### Legal Reference Guide

#### A. Customs Duty Overview

<b>Name of the tax</b>	Customs Duties
<b>Implemented by</b>	Bureau of Customs ( <a href="http://www.boc.gov.ph">http://www.boc.gov.ph</a> )
<b>Import taxes to be paid</b>	<p>A. Customs Duty (Section 104, Tariff and Customs Code of the Philippines, as amended by RA 10863 or the Customs Modernization and Tariff Act (CMTA))</p> <p>B. Value-added tax (VAT) on Importation (Section 107, Tax Code, as amended by RA 10963 or the TRAIN Law)</p> <p>C. Excise Tax (Section 129, Tax Code, as amended) on the following:</p> <ol style="list-style-type: none"> <li>1. <b>Alcohol Products</b> (Sections 141-143, Tax Code)</li> <li>2. <b>Tobacco Products</b> (Sections 144-146, Tax Code)</li> <li>3. <b>Petroleum Products</b> (Section 148, Tax Code)</li> <li>4. <b>Miscellaneous Articles</b> (Section 149-150, Tax Code)</li> <li>5. <b>Mineral Products</b> (Sections 151, Tax Code)</li> </ol>
<b>Customs Duty Rates</b>	Generally, ranges from 0% to 60%
<b>VAT on importation</b>	12% VAT is based on the total value used by the Bureau of Customs (BOC) in determining tariff and customs duties, plus customs duties, excise tax, if any, and other charges.
<b>Excise Tax</b>	Based on varied rates under Title VI of the Tax Code, as amended.

#### B. Scope of the Customs Duty

<b>Scope</b>	Except as otherwise provided for in the CMTA or in other laws, all goods, when imported into the Philippines, shall be subject to duty upon importation, including
--------------	--

	goods previously exported from the Philippines.
--	---

### C. Who is liable

<b>Owner of Imported goods</b>	<b>Section 404. Owner of Imported Goods:</b> <ul style="list-style-type: none"> <li>○ Consignee or</li> <li>○ Holder of the bill of lading or airway bill</li> </ul> <p>Thus:</p> <ul style="list-style-type: none"> <li>○ Consignee is considered the owner of the imported goods for duty purposes</li> <li>○ Consignee must be BOC accredited as regular importer</li> <li>○ Consignee may be subject to possible BOC Post-Entry Audit</li> </ul>
<b>Declarant</b>	<b>Section 106. Declarant:</b> <ul style="list-style-type: none"> <li>○ Importer</li> <li>○ Exporter</li> <li>○ Customs broker</li> <li>○ Responsible Officer/Person duly empowered to act as agent or attorney-in-fact for each holder</li> </ul>

### D. Lodgment Procedures

<b>Filing of entry or lodging of goods declaration</b>	7 days from date of discharge of last package (Customs Memorandum Order 27-2019).
<b>Payment of duties and taxes</b>	15 days from receipt of notice of assessment
<b>Claiming of goods</b>	30 days from payment

### E. How to value imported goods for customs purposes

<b>Value imported goods for customs purposes</b>	Section 701 <sup>1</sup> of the CMTA reiterated the adoption of the World Trade Organization (WTO) <sup>2</sup> of the “Transaction
--	---

<sup>1</sup> **SECTION 701. Transaction Value System—Method One.** — The transaction value shall be the price actually paid or payable for the goods when sold for export to the Philippines adjusted in accordance with the provisions of this section...

<sup>2</sup> The Philippines has been a WTO member since 1 January 1995 and a member of GATT since 27 December 1979.

	<p>Value” (TV) system as basis for valuing imported goods for duty purposes.</p> <p>Generally, in an arm’s length transaction, imports shall be assessed using the TV of the imported article (Method 1). However, when a higher comparable value exists to cast reasonable doubt<sup>3</sup> as to the truthfulness or accuracy of a given value declaration and the subsequent verification done establishes that any of the elements or conditions of Method 1 is not present or complied with, the importation shall be assessed using the alternate methods of valuation in their order of priority: Method 2—transaction value of identical goods; Method 3—transaction value of similar goods; Methods 4—deductive method; Method 5—computed value subject to reversal of Methods 4 and 5 at the option of the importer if it can be done as determined by the Commissioner of Customs; and Method 6—fallback.</p>
--	---

## F. Customs Duty Rates

<p><b>Customs Duty Rates</b></p>	<ul style="list-style-type: none"> <li>• Most favored nation (MFN) rates</li> <li>• Regular rates range from 0% to 60% under Section 1610 CMTA</li> <li>• Preferential duty rates under Free Trade Agreements             <ul style="list-style-type: none"> <li>□ Free Trade Agreements (FTAs)                 <ul style="list-style-type: none"> <li>▪ ASEAN Trade In Goods Agreement (ATIGA) (i.e., Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) - Form D</li> <li>▪ ASEAN – China – Form E</li> <li>▪ ASEAN – Korea – Form K</li> <li>▪ ASEAN – Australia and New Zealand – Form AANZ</li> <li>▪ ASEAN – Japan – Form Aj</li> <li>▪ ASEAN – India – Form AI</li> <li>▪ Philippine - Japan Economic Partnership Agreement (PJEPA) – Form PJ</li> </ul> </li> </ul> </li> </ul>
----------------------------------	---

<sup>3</sup> “Reasonable doubt” refers to any condition that creates a probable cause to make the Commissioner of Customs believe that the invoice value of the imported goods as reflected by the importer in his customs declaration is inaccurate (*Sherwin F. Tiu vs. The Secretary of Finance, CTA Case No. 5731, March 7, 2000*).

	<ul style="list-style-type: none"> <li>▪ Generalized System of Preference (GSP) – Form A</li> </ul>
--	---

## G. Conditionally free Importations

<p>Conditionally Tax and/or Duty Exempt Importations</p>	<ul style="list-style-type: none"> <li>• Aquatic Products;</li> <li>• Equipment for use in the salvage of vessels or aircrafts, not available locally;</li> <li>• Cost of repairs, excluding the value of the goods used, made in foreign countries upon vessels or aircraft documented, registered or licensed in the Philippines;</li> <li>• Goods brought into the Philippines for repair, processing or reconditioning to be reexported upon completion of the repair, processing or reconditioning;</li> <li>• Medals, badges, cups, and other small goods bestowed as trophies or prizes, or those received or accepted as honorary distinction;</li> <li>• Personal and household effects belonging to returning residents</li> </ul> <p>"Returning residents" shall refer to nationals who have stayed in a foreign country for a period of at least six (6) months. <i>Provided, That:</i></p> <ol style="list-style-type: none"> <li>a. It shall not be in commercial quantities;</li> <li>b. It is not intended for barter, sale or for hire; and</li> <li>c. Limited to the FCA or FOB value of:             <ol style="list-style-type: none"> <li>i. PhP350,000.00 for those who have stayed in a foreign country for at least 10 years and have not availed of this privilege within 10 years prior to returning resident's arrival;</li> <li>ii. PhP250,000.00 for those who have stayed in a foreign country for a period of at least 5 but not more than 10 years and have not availed of this privilege within 5 years prior to returning resident's arrival; or</li> <li>iii. PhP150,000.00 for those who have stayed in a foreign country for a period of less than 5 years and have not availed of this</li> </ol> </li> </ol>
--	--

	<p style="text-align: center;">privilege within 6 months prior to returning resident's arrival.</p> <ul style="list-style-type: none"> <li>• In addition, returning Overseas Filipino Workers (OFWs) shall have the privilege to bring in, tax and duty-free, home appliances and other durables, limited to one of every kind once in a given calendar year accompanying them on their return, or arriving within a reasonable time which, barring unforeseen and fortuitous events, in no case shall exceed 60 days after every returning OFW's return upon presentation of their original passport at the port of entry: <i>Provided</i>, That any amount in excess of FCA value of P150,000 for personal and household effects or of the number of duty-free appliances as provided for under this section, shall be subject to the corresponding taxes and duties;</li> <li>• Residents of the Philippines, OFWs or other Filipinos while residing abroad or upon their return to the Philippines shall be allowed to bring in or send to their families or relatives in the Philippines balikbayan boxes which shall be exempt from applicable duties and taxes imposed under the Tax Code, as amended, <i>Provided</i>, that balikbayan boxes shall contain personal and household effects only and shall neither be in commercial quantities nor intended for barter, sale or for hire and that the FCA value of which shall not exceed P150,000.00;</li> <li>• Wearing apparel and personal effect;</li> <li>• Professional instruments and implements, tools of trade, occupation or employment, wearing apparel, domestic animals, and personal and household effects belonging to persons coming to settle in the Philippines;</li> <li>• Goods used exclusively for public entertainment, and for display in public expositions, or for exhibition or competition for prizes, and devices for projecting pictures and parts and appurtenances thereof;</li> <li>• Goods brought by foreign film producers directly and exclusively used for mailing or recording motion picture films on location in the Philippines;</li> <li>• Importations for the official use of foreign embassies, legations and other agencies of foreign governments:</li> </ul>
--	---

	<ul style="list-style-type: none"><li>• Imported goods donated to or, for the account of the Philippine government or any duly registered relief organization, not operated for profit, for free distribution among the needy, upon certification by the DSWD or the Department of Education (DepED), or the Department of Health (DOH), as the case may be;</li><li>• Containers, holders and other similar receptacles of any material including kraft paper bags for locally manufactured cement for export, including corrugated boxes for bananas, mangoes, pineapples and other fresh fruits for export, except other containers made of paper, paperboard and textile fabrics;</li><li>• Supplies which are necessary for the reasonable requirements of the vessel or aircraft in its voyage or flight outside the Philippines;</li><li>• Goods and salvage from, vessels recovered;</li><li>• Coffins or urns containing human remains, bones or ashes, used personal and household effects (not merchandise) of the deceased person;</li><li>• Samples of the kind, in such quantity and of such dimension or construction as to render them unsaleable or of no commercial value;</li><li>• Economic, technical, vocational, scientific, philosophical, historical and cultural books or publications, and religious books like Bibles, missals, prayer books, the Koran, Ahadith and other religious books of similar nature and extracts therefrom, hymnal and hymns for religious uses;</li><li>• Philippine goods previously exported from the Philippines and returned without having been advanced in value or improved in condition by any process of manufacturing or other means, and upon which no drawback or bounty has been allowed, including instruments and implements, tools of trade, machinery and equipment, used abroad by Filipino citizens in the pursuit of their business, occupation or profession;</li><li>• Aircraft, equipment and machinery, spare parts, commissary and catering supplies, aviation gas, fuel and oil, whether crude or refined except when directly or indirectly used for domestic operations, and such other goods or supplies imported by and for</li></ul>
--	---

	<p>the use of scheduled airlines operating under congressional franchise;</p> <ul style="list-style-type: none"> <li>• Machineries, equipment, tools for production, plans to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals, and transportation and communications facilities imported by and for the use of new mines and old mines which resume operations;</li> <li>• Spare parts of vessels or aircraft of foreign registry engaged in foreign trade when brought into the Philippines exclusively as replacements or for the emergency repair thereof;</li> <li>• Goods exported from the Philippines for repair, processing or reconditioning without having been substantially advanced in value, and subsequently reimported in its original form and in the same state;</li> <li>• Trailer chassis when imported by shipping companies for their exclusive use in handling containerized cargo, upon posting a security in an amount equal to one hundred percent (100%) of the ascertained duties, taxes and other charges due thereon.</li> </ul>
--	--

## H. Advance Customs Ruling

<p><b>Advance customs rulings (Sec 1100, 1101, 1102, CAO 3-2016/ CMO 30-2016/ Tariff Commission Order 2017-01)</b></p>	<ul style="list-style-type: none"> <li>• Must be filed at least 90 calendar days before the importation in question (date of Lodgment of Goods Declaration)</li> <li>• Ruling is issued within 30 days from receipt of the Request for Ruling or additional documents</li> <li>• Only benefits the Requesting Party, but may be cited by another in his request</li> <li>• Valid for a period of 3 years from issuance or from the date specified in the Ruling</li> <li>• Ruling covers:             <ul style="list-style-type: none"> <li><input type="checkbox"/> Valuation – Obtained from the BOC</li> <li><input type="checkbox"/> Classification – Obtained from the Tariff Commission</li> <li><input type="checkbox"/> Origin of goods – Obtained from the BOC</li> </ul> </li> </ul>
--	---

## I. Audit Powers of the BOC

<p><b>Post Clearance Audit</b></p>	<p>Within three (3) years from the date of final payment of duties and taxes or Customs Clearance, as the case may be.</p> <p>Coverage of audit is three (3) years from date of issuance of ANL counted backwards.</p> <p>It covers the audit examination, verification and investigation of records pertaining to Goods declarations filed by an importer for the purpose of ascertaining their correctness and determining the liability of importer for duties, taxes and other charges, including fine or penalty.</p>
------------------------------------	--

## J. Penalties

<p><b>Penalties imposable during Post Clearance Audit (PCA)</b></p>	<p>Any importer who, after being subjected to compliance audit, is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to two degrees of culpability, namely:</p> <ul style="list-style-type: none"> <li>• <i>Negligence</i><sup>4</sup>. The applicable penalty is an administrative fine of 125% of the revenue loss.</li> <li>• <i>Fraud</i><sup>5</sup>. The applicable penalty is an administrative fine equivalent to six (6) times the revenue loss and/or imprisonment of not less than two (2) years, but not more than eight (8) years.</li> </ul> <p>Aside from the administrative fine, a 20% interest (per annum) on deficiency duties, taxes and other charges (plus fines and penalties, if any) can now be imposed under the CMTA. The interest is counted fifteen (15) days from receipt of demand letter by the importer arising from audit</p>
---	---

<sup>4</sup> The term “negligence” shall refer to failure to exercise reasonable care and competence, through act or acts of omission or commission, in ensuring that a statement made is correct resulting in a deficiency in taxes and duties paid.

<sup>5</sup> The term “fraud” shall refer to the commission or omission of any act resulting in material false statements such as, but not limited to, the submission of false or altered documents in connection with any importation knowingly, voluntarily and intentionally done to reduce the taxes and duties paid or to avoid compliance with government regulations related to the entry of Regulated, Prohibited or Restricted goods into Philippine customs territory through Misdeclaration, Misclassification or Undervaluation

	<p>findings on deficiency duties, taxes and other charges as well as fine or penalty, if any.</p>
<p><b>Failure to Keep Records</b></p>	<p>Any person who fails to keep and maintain the prescribed records required to be kept and maintained shall be subject to the following:</p> <ul style="list-style-type: none"> <li>○ <u>Suspension or cancellation of accreditation</u> as Importer with the Bureau;</li> <li>○ <u>Surcharge of twenty percent (20%) on the dutiable value</u> of the goods which is the subject of the importation for which no records were kept and maintained;</li> <li>○ <u>Hold delivery or release of subsequent imported articles</u> to answer for the fine and any revised assessment;</li> <li>○ <u>Criminal prosecution</u> punishable with imprisonment of not less than three (3) years and one (1) day but not more than six (6) years, and/or a fine of one million pesos (PhP1,000,000.00); and</li> <li>○ <u>Waiver of the right to contest the results of the audit</u> based on records kept by the Bureau.</li> </ul>
<p><b>Failure to give full and free access</b></p>	<p>Any person who denies the authorized officer full and free access to the records shall be subject to the following:</p> <ul style="list-style-type: none"> <li>○ <u>Suspension or cancellation of accreditation</u> as Importer with the Bureau;</li> <li>○ <u>Punishment for contempt, for refusal to provide access</u>, from the proper court having criminal jurisdiction over the matter;</li> <li>○ <u>Re-assessment of the importations subject of the audit</u>, the declared value being presumed inaccurate;</li> <li>○ <u>Surcharge of 20% on the dutiable value of the goods</u> for which no records were kept or maintained.</li> <li>○ <u>Hold delivery or release of subsequent imported articles</u> to answer for the fine and any revised assessment;</li> <li>○ <u>Criminal prosecution</u> punishable with imprisonment of not less than three (3) years and one (1) day but not more than six (6) years,</li> </ul>

	and/or a fine of one million pesos (PhP1,000,000.00).
--	---

## K. Prior Disclosure Program

<b>Prior Disclosure Program</b>	<ul style="list-style-type: none"> <li>• A program authorizing the Commissioner of BOC to accept prior disclosure reported by importers arising from plain errors or innocent mistakes in the goods declaration resulting to deficiency in duties, taxes and other charges on past importations. (in relation to Section 1131, CMTA)</li> <li>• PDP is basically a compliance and revenue measure</li> <li>• Any importer may avail the PDP, except:             <ul style="list-style-type: none"> <li>○ If the case is pending with any other customs office;</li> <li>○ If the case is already filed and pending in courts; and</li> <li>○ If the goods declaration involves fraud.</li> </ul> </li> </ul>
<b>Benefit of the Program</b>	<p>For PDP availment <u>prior</u> to receipt of ANL</p> <ul style="list-style-type: none"> <li>○ Waiver of Administrative fine of 125% of the revenue loss for cases involving negligence</li> <li>○ Payment of Deficiency duties and taxes due</li> <li>○ Interest of 20% per annum</li> </ul> <p>For PDP availment <u>after</u> receipt of ANL but before Audit Proper</p> <ul style="list-style-type: none"> <li>○ Payment of Deficiency duties and taxes due</li> <li>○ <i>Plus, a reduced penalty of 10% of the basic deficiency (as compared to administrative fine of 125% of the revenue loss for cases involving negligence)</i></li> <li>○ Interest of 20% per annum</li> </ul> <p>For PDP availment on royalties, and b) other price adjustments (e.g., proceeds on any subsequent resale)</p> <ul style="list-style-type: none"> <li>○ Payment of Deficiency duties and taxes due <i>without penalty.</i> <ul style="list-style-type: none"> <li>▪ Provided, the applicant files for PDP within 30 days from date of payment to the seller.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>▪ If after 30 days, the 10% (with ANL) rate will apply.</li> </ul>
--	---

**L. Trade Remedy Measures**

<b>RA No. 8752 /Sec. 711 CMTA (Anti-dumping Act)</b>	<b>RA No. 8751/Sec. 713 CMTA (Countervailing duty Act)</b>
When a Philippine domestic industry is being (or likely to be) materially injured by the “dumping” of like or comparable articles imported into (or sold in) the Philippines.	Injury is caused by the “assistance or subsidization” of articles by the country of export, a countervailing duty (CVD) may be imposed.
AD cases are company specific and the duty is generally calculated to bridge the gap back to the normal value (market price) of the dumped articles.	On the other hand, CVD cases are country specific. Duties are calculated to more or less duplicate the value of the subsidy.

<b>RA No. 8752 (Anti-dumping Act)</b>	<b>RA No. 8751 (Countervailing duty Act)</b>
<b>Commonality of Elements</b>	
<p>I. Determination of Like Product</p> <ul style="list-style-type: none"> <li>• The determination essentially involves examining the alleged dumped or subsidized products, and then establishing what domestically produced products are the appropriate “like product”.</li> <li>• In a previous decision, the TC ruled that if the domestically produced and imported products fall under the same ASEAN Harmonized Tariff Nomenclature subheadings, undergo the same manufacturing process, use the same raw materials, possess the same physical characteristics and generally have the same uses and applications, they are considered “like products”.</li> </ul>	

<p>2. Determination of material injury</p> <ul style="list-style-type: none"> <li>• There must be actual or threatened material injury to a domestic industry.</li> <li>• The injury test must be based on positive evidence showing, among others, that             <ul style="list-style-type: none"> <li>(i) the volume of the dumped or subsidized imports is not in negligible quantity;</li> <li>(ii) actual or potential decline in sales, market share, profits, etc.;</li> <li>(iii) price undercutting is significant as a consequence of a very much lower price of import; and</li> <li>(iv) actual or potential effects on cash flow, inventories, employment, wages, growth, and ability to raise capital or investments.</li> </ul> </li> </ul>
<p>3. Determination of Causal link</p> <ul style="list-style-type: none"> <li>• The material injury suffered by the domestic industry must be the direct result of the importation of the dumped product. Needless to state, it must be clear, evidence taken together, that the injury suffered is directly attributable to the alleged dumping or subsidization.</li> </ul>

<b>RA No. 8752 (Anti-dumping Act)</b>	<b>RA No. 8751 (Countervailing duty Act)</b>
Specific Elements	Specific Elements
<ul style="list-style-type: none"> <li>• Proof that the exporters sell their product to an importer in the Philippines, at an export price lower than its “market price” or “normal value” in the country of export</li> <li>• If provisionally estimated margin of dumping is less than 2% of the export price, considered as de minimis margin of dumping and shall result to the termination of investigation.</li> </ul>	<ul style="list-style-type: none"> <li>• “subsidy” must be present.</li> <li>• “subsidy” exists when, among others,             <ul style="list-style-type: none"> <li>(i) direct and/or potential transfer of government funds (e.g., grants, loans with non-commercial terms, equity infusion, loan guarantees) to an industry or producer;</li> <li>(ii) revenue due from an industry or producer (e.g., tax credits) is foregone; or</li> <li>(iii) goods or services provided by the government for an industry or a producer (e.g., government supplies raw materials to an entity).</li> </ul> </li> </ul>

<p><b>Dumping relief measures</b></p> <ul style="list-style-type: none"> <li>• Provisional dumping measure shall take the form of a provisional duty, or preferably, a security by cash deposit or bond, equal to the estimated difference between the normal value and the export price of the protested article, the former being higher than the latter.</li> <li>• A dumping duty (which is imposed at the time of importation) has the effect of raising the price of the imported product to a level whereby the unfair advantage enjoyed by the exporter (or importer) of that product is eliminated.</li> </ul>	<p><b>Countervailing relief measures</b></p> <ul style="list-style-type: none"> <li>• Provisional countervailing measure shall take the form of a security, by cash deposit or bond, equal to the amount of provisionally calculated amount of subsidy.</li> <li>• A countervailing duty has the effect of raising the price of the imported product to a level at which the domestic industry can compete.</li> </ul>
---	--

<p><b>RA No. 8800/Sec. 712 CMTA (Safeguard Measures Act)</b></p>	<p><b>Safeguard relief measures</b></p>
<ul style="list-style-type: none"> <li>• RA No. 8800 provides an interim protection to a domestic industry affected by the surge of unexpected and unforeseen increased imports</li> <li>• causing or threatening to cause serious injury to domestic producers</li> <li>• of like or directly competitive products.</li> <li>• The purpose for the application of safeguard measures is to give them reasonable time to a) prepare for, and b) adjust to, increased import competition, resulting from the reduction of tariffs or the lifting of</li> </ul>	<ul style="list-style-type: none"> <li>• Provisional safeguard measure shall take the form of a tariff increase, which shall be paid through a cash bond. The cash bond is set at a level sufficient to prevent serious injury to the domestic industry.</li> <li>• Definitive safeguard measures are applied on a global basis and may generally take the form of an increase in, or imposition of, tariffs; decrease in, or imposition of, tariff rate quotas (Minimum Access Volume); or quantitative restrictions (import quotas).</li> <li>• Other actions, such as initiation of international negotiations may also be</li> </ul>

quantitative restrictions agreed upon in multilateral trade negotiations.	recommended for the purpose of addressing the underlying cause of the increase in imports.
--	--

The content is based on information current as of December 31, 2020. Changes to the customs laws and other applicable rules may be proposed. Therefore, readers should contact MTF to obtain further information.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. MTF has no responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

**Mata-Perez, Tamayo & Francisco Counsel**

Attorneys- At-Laws  
Unit 15A, ACT Tower  
135 H.V. Dela Costa St.  
Salcedo Village, Makati City 1227  
Philippines  
Trunk Line: +632 831 1297