VPO-06-05-012

May 31, 2006

HONORABLE RALPH G. RECTO
Chairman
Committee on Ways and Means
Senate of the Philippines
GSIS Bldg., Pasay City

Dear **Senator Recto**:

We received a draft of the Senate Bill as of May 29, 2006 in substitution of H. No. 4069, taking into consideration S Nos. 453, 455,1058, 1969, 1976 and 2154.

May we request that your Committee take into consideration our comments and observation on the proposed Senate Bill.

The Bureau of Customs collects duties as its revenue under the Tariff and Customs Code of the Philippines and collects taxes under the National Internal revenue Code (Commonwealth Act No. 466 as amended) for the Bureau of Internal Revenue. To simplify the collection of these two types of revenues, the Bureau of Customs collects both the duties and taxes for goods under Formal or Consumption Entries as these goods entered the commerce in the Philippines. However, for goods intended to be used for products for export, duties and taxes are merely assessed by Warehousing Assessment Division (WAD) of BOC but not collected as they have not entered the commerce in the Philippines. However, Warehousing Bonds are posted to secure the payment of the assessed duties and taxes, if the goods are not exported beyond the allowed period to export but subject to rebate if exported later on.

We are happy to note that the proposed Bill has preserved the non-imposition of duty on the raw materials intended for use in the production of goods for export. As the provision of the NIRC applies on taxes, the applicable provisions of the NIRC on goods for export are the following:

Under Revenue Memorandum No. 7-2006 dated December 15, 2005

"Prescribing Guidelines and procedures in the Processing of Applications for Zero Rating of Effectively Zero-Rated Traqnsactions For Value Added Tax Purpose", it is provided in Section 7 therefore, to wit:

"Approved for VAT Zero-rating shall be required only for transactions which fall under the provision of Sections 106 (A),(2),(a),(3),(5) and (6); 106 (A) (2) (C);

and 108 (B), (3), (4) and (5) of the national Internal Revenue Code (NIRC) of 1997 as last amended by Republic Act No. 9337. ACCORDINGLY TRANSACTIONS FALLING UNDER THE PROVISIONS OF SECTIONS 106 (A), (2), (a), (1), (2) and (4) xxxxxx for processing of goods on consignment and 108 (B) (1) OF THE NIRC WHICH ARE AUTOMATICALLY CONSIDERED AS ZERO-RATED SHALL NOT BE COVERED BY THIS ORDER."

There is therefore no need to apply for approved for zero-rating for transactions covered by Sections 106 (A) (2) (a) (1) and (2), and

Sec. 106 (A)(2) – The following sales by VAT registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales – the term export sales means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the bangko Sentral ng Pilipinas (BSP).

Even the services required to produce these goods for export are not subject to sales taxes as per Sec. 108 (B) (1); to wit:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas;

(3) Services performed by subcontractor and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.

Section 26 – We noticed that the word INDUSTRY SPECIFIC has been inserted which means that only INDUSTRY SPECIFIC can now be created.

Section 27 amending 1902 of the TCCP. The last paragraph of which states " THE OPERATORS OF THE BONDED WAREHOUSES SHALL, FOR LEGITIMATE PURPOSES, MAKE AVAILABLE TO THE PUBLIC AN INVENTORY OF ALL ARTICLES STORED THEREIN. FAILURE TO DO SO IS A MANDATORY GROUND FOR THE REVOCATION OF LICENSE TO OPERATE A BONDED WAREHOUSE."

Submitting inventory of Common Bonded Warehouses to the Bureau of Customs Post Audit Group is reasonable and fair but making public the inventory of all articles stored in a Common Bonded Warehouse will do away with privacy and expose vital statistics of importers to their competitors and thereby creates threat to their operations.

Section 30 amending Section 1904 of the TCCP. We noticed that the *Warehousing Bond* in the caption is bracketed which means deletion. The same is true with the phrase *or bond* in the lines 5 & 6 of page 22 of the draft bill. This would mean the collaterals left are Irrevocable Domestic Letter of Credit or Bank Guarantee.

The collaterals for taxes and duties shall be Irrevocable Letter of Credit or Bank Guarantee. SURETY BOND IS DELETED. This means that capital of exporters who import their raw materials will be tied up, limiting their available capital for their operations. Surety Bonds should not be deleted as they are the least expensive and are the most practical collaterals for duties and taxes. The capital of small and medium exporters who import raw materials would be unnecessarily tied up and they will be forced to borrow additional capital with interest to pay while their original capital is tied up for a year or so. These exporters would end up being given tax credits which if rediscounted will again suffer reduction in value. The Surety Bonds as collaterals are not the problem but what is needed is the proper administration of bonds. The bonding companies should be accredited properly and those below par should not be accredited in order to safeguard the integrity of the brokerage profession.

If a consortium is the practical solution to the problem of uncollected bonds, then it is worth giving a try.

Section 33 amending Section 1907 of the TCCP. The phrase *"or bond"* is likewise deleted. The second paragraph states "PROOF MUST BE SHOWN THAT THE ORDER TO IMPORT THE SUBJECT ARTICLES HAS BEEN CANCELLED: PROVIDED FURTHER, THAT THE ARTICLES TO BE WITHDRAWN DO NOT AMOUNT TO MORE THAN FIFTY PERCENT (50%) OF THE TOTAL INVENTORY OF THE BONDED WAREHOUSE".

Materials imported for manufacturing or processing into goods for export do not stay in the warehouse as they are immediately taken delivery of by the importers considering that in the export business, time is of the essence and delivery commitments must be met. The prevailing practice is withdrawal of one hundred percent (100%) of goods imported. We therefore consider the withdrawal of not more than 50% unrealistic and impractical.

Section 35 amending section 1910 of the TCCP as subsection C- Paragraph 1.

We would like to request that the definition of finished articles in Subsection C-Paragraph 1 be so worded as to include accessories and intermediate products.

> **Subsection C-1** Finished articles is defined as "Scientifically or technologically processed articles such that no other product can be manufactured thereof, unless its principal character is first destroyed". However, finished articles should include "finished goods used as accessories or as intermediate goods. Accessories are goods used as part of a set to complete the set". Examples are shoes for Santa Claus, and clocks as attachments to shells or native crafts. Milk and sugar are good examples of intermediate goods as they can in their original state are finished products and can be consumed but they can also be used to produce other products such as cakes, candies and ice cream and in the process lose their original identity as finished goods.
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> **Subsection C-2-** considers as smuggled articles those that are imported IN EXCESS OF THE VOLUME OR QUANTITY ALLOWED UNDER THE LICENSE OF THE CUSTOMS BONDED WAREHOUSE. PHILEXPORT has always maintained that the volume or quantity of importation must not be restricted as this would violate WTO regulations aside from impending the growth and development of exports. There are materials needed for export production that are imported based on the requirements of the foreign buyers. This restriction also contradicts the government's and Export Development Council's policy of facilitating exports.
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> **Subsection F-** The present practice, as provided in Customs Memorandum Order (CMO) No. 39-91, of a nine-month manufacturing/storage period, extendable for another 3 months, instead of requiring re-exportation within thirty (30) days from withdrawal from the bonded warehouse should be maintained. The proposal of a "thirty (30) days re-exportation after withdrawal" is not realistic and does not reflect the actual entrepreneur/industry experience.

Section 38 amending Section 2002 of the TCCP.

On page 28 line 4,of the proposed Bill the word 30 days should be changed with the word six (6) months. On line 4 thereof, the words thirty (30) days should be changed to read six (6) months to read three months consistent with Section 1908 page 24 line 5 and 6 of the Bill.

Section 2 amending Section 201 of the TCCP and Section 40 amending Section 2317 of the TCCP

We noticed that while Surety Bond can be utilized as guarantee in the case of tentative release of goods subject to final determination of the duties and taxes under Section 2 of this Bill amending Section 201 of the TCCP and likewise Bonds are acceptable under Section 40 of this Bill amending Section 2317 of the TCCP but the use of Surety Bonds are excluded in Sections 30 and 33 of this Bill amending Sections 1904 and 1907 of the TCCP.

Section 49 amending Section 3601 of the TCCP.

We are bothered with the provision in the Bill that ANY IMPORTATION WHICH IS NOT COVERED BY A LETTER OF CREDIT AND/OR PERMIT FROM THE BANGKO SENTRAL NG PILIPINAS TO IMPORT SAID PRODUCT SHALL BE CONSIDERED AS ILLEGALLY IMPORTED AND SHALL BE DISPOSED OF IN THE MANNER AS PROVIDED FOR IN SECTION 2602 OF THIS CODE.

This is a very restrictive measure considering that Letter of Credit is only one means of importing goods. There are consignments, open accounts, telegraphic transfers and other forms of credit transactions used in the export industry. Liberalization and not restriction is the way to go.

Thank you for your kind understanding and support to the export sector of our economy.

Truly yours,

SERGIO R. ORTIZ-LUIS, JR.
President and CEO

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