

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS

First Regular Session

House Bill No. **3107**



INTRODUCED BY REPRESENTATIVE ARTHUR C. YAP

EXPLANATORY NOTE

This draft measure proposes the revision and increase of the penalties for the crime of smuggling. More importantly, it defines the crime of smuggling constituting economic sabotage, hence punishable by capital punishment.

Under the present law, the highest penalty that can be imposed is a only a fine of P8,000 to P10,000 and imprisonment of 8 to 12 years. This penalty range is imposed on the ceiling importation amount of P150 Thousand.

It can be gainsaid that this is a very measly penalty. The law does not take into account the fact that nowadays, the amount of illegally imported items usually totals millions of pesos, or in amounts far, far greater than the ceiling amount of 150 Thousand Pesos. Therefore, for smuggling amounting to P151 Thousand, and of P100 Million, the same measly penalty would be imposed.

Also, it is only when the crime of homicide is committed by reason or on the occasion of the unlawful importation that the penalty of reclusion perpetua to death shall be imposed. But, considering that smuggling is an offense that would nowhere near result to death, this capital punishment can be very seldom, if not never, be imposed.

For a crime that threatens the very stability of our country, an enormous offense that surely qualifies as economic sabotage, there is an urgent need for legislative initiative, if only just to make the penalties to this crime commensurate to the gravity of the offenses.

Under this proposal, the revised penalties for smuggling would be as follows:

AMOUNT SMUGGLED	FINE	IMPRISONMENT
P 100,000 – 1 Million	P 50,000 – 100,000	8 – 12 years
P 1 Million – 50 Million	P 100,000 – 500,000	12 – 20 years
More than P50 Million	P 500,000 – P1 Million	Reclusion Perpetua

Based on the above table of penalties, the ceiling of P150 Thousand would be increased. New ranges, in terms of the value of smuggled items, are to be inserted. When the amount of smuggled articles is greater than the amount of 50 Million Pesos, the penalty makes this kind of smuggling at par with the offense of plunder.

Also, under this measure, in determining the appropriate penalty, the value of the imported items article/s, shall be accumulated or aggregated from all of the importations. The cases cannot be split or filed individually to lower the offense and/or the penalty.

In addition, Customs officials and employees who commit smuggling in conspiracy with private individuals shall be equally liable to the penalty imposed. These officials would not just include the BOC, but also the usual "task forces" deputized or assisting it. Thus, the usual scenario that these "task forces" become just another layer of corrupt or would be corrupted Customs men, would be prevented.

Moreover, these employees or officials would be penalized when they are found, not just to be in conspiracy with, but when they are, by willful neglect, allowing the smuggling. Therefore, these Customs officials would no longer be able to hide behind the cloak of carelessness, negligence, or any inanity, to evade being penalized for the offense.

Time and again, it has been mentioned that taxes are the lifeblood of a nation. In our country, this blood is not even allowed to properly enter into its system, making the sustenance of its life gravely difficult.

In a recent editorial of the Philippine Daily Inquirer, the potential revenues lost on smuggling was tagged at between P90 billion to P200 billion annually. For the period 2002 and 2007, it was reported that the exports to the country amounted to \$284.7 billion. However, the Bureau of Customs' records showed only \$195.01 billion. The foregone revenues from the 12-percent value-added tax (VAT) and from an average 5-percent tariff were estimated at P127.08 billion.

It is true that there are high profile cases of smuggling reported. There was the reported disappearance of some 2,000 containers carrying taxable goods from the Manila International Container Port to the Batangas. Before this was the reported series of technical smuggling allegedly being done by petroleum companies.

But these cases are just reported. Period.

Moreover, it is not only that nothing happened or is happening, out of these cases. The smuggling continues and remains unabated. And, the amounts involved are even skyrocketing. Very recently, it involved almost Half a Billion Pesos of smuggled rice abandoned at the Subic Free Port.

To simplify, there may be two main factors for this.

One is not just the coddling, but conspiracy, of Customs employees with big time smugglers. It is an open secret that even though there are new and hi-tech x-ray machines in the seaports and airports to screen cargo vans, the Customs bureau remains blind, or still turns a blind eye. The goods that are screened remain undervalued and the taxes and duties payable thereon are very much lowered.

Second, is the fact that even if cases are filed, these do not serve as a deterrent. Cases filed are either easily dismissed, or more often, allowed to wallow for very long periods of time. Then, after they forgotten by the media and the public, these cases are clandestinely dismissed.

Indeed, smuggling is a very difficult problem to solve. However, as always, increasing the penalty to an offense is as effective deterrent to would be offenders than any other possible preventive measure.

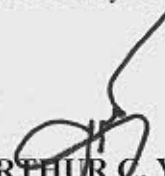
For one, if the possible penalty is capital punishment, then bail would not be allowed if prima facie evidence is found against the accused. While the criminal complaint is pending in court, the accused would languish in jail, thus preventing him from continuing with his modus operandi. And, the Customs official involved would likewise suffer the same predicament. He or she cannot also continue with whatever running anomaly he or she has been perpetrating.

And finally, the imposition of capital punishment to big time smugglers, would probably not just serve as a deterrent, but may put an end to this heinous crime.

As the term connotes, these smugglers are "big time". They are not just your run of the mill tax evaders. They are not just ordinary entrepreneurs but probably industrialists, multi-millionaires or even billionaires, even known to high society. Their conviction would be really high profile, such that no person of similar stature would want to be subjected ever again to such. Then, probably then, big time smuggling would stop.

To reiterate, the financial losses in revenues brought about by rampant smuggling could have been the much needed lifeblood that our severely ailing economy needs. Indeed, to quote the same editorial, *"it is money that could go a long way in combating poverty and financing the construction and maintenance of thousands of school buildings, hospitals, roads and bridges"*.

It is in this view that the immediate passage of the bill is earnestly sought.



ARTHUR C. YAP
Representative

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House Bill No. ____

INTRODUCED BY REPRESENTATIVE ARTHUR C. YAP

AN ACT
REVISING AND INCREASING THE PENALTIES FOR
SMUGGLING, DEFINING SMUGGLING CONSTITUTING
ECONOMIC SABOTAGE AND IMPOSING THEREON THE
PENALTY OF RECLUSION PERPETUA, AMENDING FOR THE
PURPOSE REPUBLIC ACT NO. 7659, KNOWN AS THE DEATH
PENALTY LAW, ALSO AMENDING PRESIDENTIAL DECREE
NO. 1464, OTHERWISE KNOWN AS THE REVISED TARIFF AND
CUSTOMS CODE, 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 as the “Increased Penalty
2 Smuggling and Capital Punishment for Smuggling Constituting Economic Sabotage Act
3 of 2013”.

4 **SECTION 2. *Declaration of Policy.*** – It is hereby declared the policy of the State
5 to curb big time smuggling. Taxes are the lifeblood of a nation. The financial losses in
6 revenues brought about by rampant smuggling should be minimized, if not altogether
7 brought to naught. Smuggling is an offense that threatens the very stability of our country
8 and is tantamount to economic sabotage. It is the policy of the State to make the penalties
9 to this crime commensurate to the gravity of the offenses.

10 **SECTION 3. *Revised and Increased Penalty for Smuggling and Capital***
11 ***Punishment for Smuggling Constituting Economic Sabotage.*** – A new Section 12-A is
12 hereby inserted to Republic Act No. 7659, otherwise known as the Death Penalty Law, to
13 read as follows:

1 **"SECTION 12-A.** Section 3601 of Presidential Decree No. 1464,
2 as Amended, otherwise known as the Revised Tariff and Customs Code, is
3 hereby amended to read as follows:

4 "PART 3

5 Penal Provisions

6 SECTION 3601. Unlawful Importation. —

7 Any person who shall fraudulently import or bring into the
8 Philippines, or assist in so doing, any article, contrary to
9 law, or shall receive, conceal, buy, sell, or in any manner
10 facilitate the transportation, concealment, or sale of such
11 article after importation, knowing the same to have been
12 imported contrary to law, shall be guilty of smuggling and
13 shall be punished with:

14 xxx

15 4. A fine of not less than **FIFTY [eight]**
16 thousand pesos (**P50,000.00**) nor more than **ONE**
17 **HUNDRED [ten]** thousand pesos (**P100,000.00**) and
18 imprisonment of not less than eight (8) years and one (1)
19 day nor more than twelve (12) years, if the appraised value
20 to be determined in the manner prescribed under this Code,
21 including duties and taxes, of the article unlawfully
22 imported **IS MORE THAN [exceeds]** one hundred fifty
23 thousand pesos **AND DOES NOT EXCEED ONE**
24 **MILLION PESOS (P1,000,000);**

25 4-A. **A FINE OF NOT LESS THAN ONE**
26 **HUNDRED THOUSAND PESOS (P100,000.00) NOR**
27 **MORE THAN FIVE HUNDRED THOUSAND PESOS**
28 **(P500,000.00) AND IMPRISONMENT OF NOT LESS**
29 **THAN TWELVE (12) YEARS AND ONE DAY NOR**

1 MORE THAN TWENTY (20) YEARS, IF THE
2 APPRAISED VALUE TO BE DETERMINED IN THE
3 MANNER PRESCRIBED UNDER THIS CODE,
4 INCLUDING DUTIES AND TAXES, OF THE
5 ARTICLE UNLAWFULLY IMPORTED IS MORE
6 THAN ONE MILLION PESOS (P1,000,000.00) AND
7 DOES NOT EXCEED FIFTY MILLION (P50,000,000)
8 PESOS;

9 5. The penalty of prison mayor shall be
10 imposed when the crime of serious physical injuries shall
11 have been committed and the penalty of A FINE OF NOT
12 LESS THAN FIVE HUNDRED THOUSAND PESOS
13 (P500,000.00) BUT NOT MORE THAN ONE
14 MILLION PESOS (P1,000,000.00) AND reclusion
15 perpetua [~~to—death~~] shall be imposed WHEN IT
16 CONSTITUTES ECONOMIC SABOTAGE OR IF
17 THE APPRAISED VALUE TO BE DETERMINED IN
18 THE MANNER PRESCRIBED UNDER THIS CODE,
19 INCLUDING DUTIES AND TAXES, OF THE
20 ARTICLE UNLAWFULLY IMPORTED EXCEEDS
21 FIFTY MILLION PESOS (P50,000,000.00) AND when
22 the crime of homicide shall have been committed by reason
23 or on the occasion of the unlawful importation.

24 IN CASES OF MULTIPLE IMPORTATIONS,
25 THE CASES CANNOT BE FILED INDIVIDUALLY
26 FOR PURPOSES OF LOWERING THE OFFENSE
27 AND THE PENALTY. THE APPRAISED VALUE OF
28 THE IMPORTED ARTICLE, INCLUDING DUTIES
29 AND TAXES, SHALL BE ACCUMULATED OR

1 AGGREGATED FROM ALL OF THE
2 IMPORTATIONS, ACTS OR TRANSACTIONS AS
3 ENUMERATED UNDER THE FIRST PARAGRAPH
4 OF THIS PROVISION.

5 IN ADDITION TO THE OFFENSES
6 PUNISHABLE UNDER SECTION 3604 OF THIS
7 CODE, ANY OFFICIAL, AGENT OR EMPLOYEE
8 OF THE BUREAU OF CUSTOMS OR OF ANY
9 OTHER AGENCY OF THE GOVERNMENT
10 CHARGED, DEPUTIZED OR ASSISTING WITH
11 THE ENFORCEMENT OF THE PROVISIONS OF
12 THIS CODE, WHO IS FOUND GUILTY OF
13 COMMITTING, IN CONSPIRACY WITH,
14 KNOWINGLY, OR BY WILLFUL NEGLECT, ANY
15 OF THE ABOVE ENUMERATED OFFENSES,
16 SHALL BE EQUALLY LIABLE TO THE PENALTY
17 IMPOSED THEREIN.

18 xxx"

19 **SECTION 4. *Separability Clause.*** - If any provision of this Act, or any parts
20 thereof, is declared unconstitutional, the same shall not affect the validity and effectivity
21 of the other portions.

22 **SECTION 5. *Repealing Clause.*** - All laws, executive orders, presidential
23 decrees, proclamations, rules, regulations, issuances and enactments of parts thereof
24 inconsistent with this Act are hereby repealed or modified accordingly.

25 **SECTION 6. *Effectivity.*** - This Act shall take effect fifteen (15) days from its
26 complete publication in the Official Gazette or in a newspaper of general circulation in
27 the Philippines, whichever comes earlier.

APPROVED.