

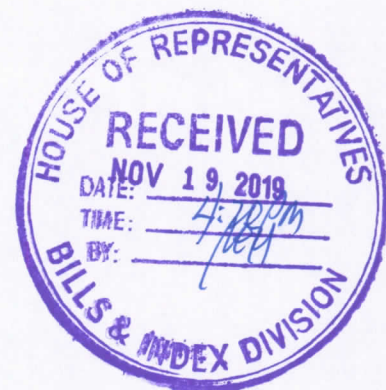


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

5548

House Bill No. _____



Introduced by Representative Sharon S. Garin

EXPLANATORY NOTE

Republic Act No. 10863 otherwise known as the Customs Modernization and Tariff Act (CMTA) was enacted barely three (3) years from the filing of this measure. Despite the passage of such important piece of legislation that aimed to modernize, simplify, harmonize, make the customs processes transparent, and enhance the trade facilitation in the Philippines, CMTA still needs to be improved particularly on the other third parties involved in the entire customs process.

Hence this bill seeks to amend the provisions, among others, affecting the customs clearance, Off-Dock Customs Facilities Warehouse (CFWs) and that of the other third parties as defined in the law.

To further assist the government in the collection of revenue without hampering the trade facilitation, this bill seeks to simplify and clearly define some processes in the customs clearance of imported goods. To prevent the proliferation of Off-Dock CFWs, a situation that will imperil the capability of Bureau of Customs to properly supervise and control customs operations, there is a need to define Aggregate Capacity Utilization (ACU). To protect the proliferation of "fly-by-night and "bukas-sara" operators and ultimately, to curb smuggling, it is imperative separate the process of the establishing the CFWs. Lastly, to further promote utilization of CY/CFS as the facilities for the proper collection of duties and taxes, to prevent the entry of drugs and other social-goods, to facilitate customs clearance process for containerized consolidated shipments, it is important to set stricter provisions in granting the authority to operate a CFW.

This bill likewise seeks to further empower the BOC in the imposition of administrative sanctions insofar as the third parties are concerned.

In view of the foregoing, passage of this bill is earnestly sought.

SHARON S. GARIN
Party-list, AAMBIS-OWA



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AN ACT

AMENDING FOR THE PURPOSE SECTIONS 102, 119, 201, 307, 402, 405, 407, 431, 802, 806, 1135, 1100, 1129, 1147, 1400 AND 1226 AND DELETING SECTION 709 OF THE REPUBLIC ACT NO. 10863 OTHERWISE KNOWN AS THE CUSTOMS MODERNIZATION AND TARIFF ACT

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

SECTION 1. Title I, Chapter II, Section 102, Definition of Terms of Republic Act No. 10863 otherwise known as the Customs Modernization and Tariff Act (CMTA) is hereby amended by inserting a new paragraph (d) and the subsequent paragraphs shall be renumbered accordingly, to read as follows:

“SEC. 102.*Definition of Terms.* – As used in this Act:

(a) x x x

x x x

(d) AGGREGATE CAPACITY UTILIZATION (ACU) REFERS TO THE TOTAL CAPACITY IN TWENTY EQUIVALENT UNITS (TEU) OF EXISTING CFWs.”

[(qq) Tentative Release refers to a case where the assessment is disputed and pending review, an importer may put up a cash bond equivalent to the duties and taxes due on goods before the importer can obtain the release of said goods;]

SECTION 2. Title I, Chapter III, Section 119, Restricted Importation, and Exportation of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

“SEC.119. *Restricted Importation, and Exportation.*— Except when authorized by law or regulation, the importation and exportation of the following restricted goods are prohibited:

(a) Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, or parts thereof;

(b) Roulette wheels, gambling outfits, [loaded dice, marked cards,] machines, apparatus or mechanical devices used in gambling or the distribution of money, cigars, cigarettes or other goods when such distribution is dependent on chance, including jackpot and pinball machines or similar contrivances, or parts thereof;

(c) x x x;

x x x

x x x

(f) x x x.”

SECTION3. Title II, Chapter I, Section 201, Powers and Functions of the Commissioner of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

“SEC. 201.*Powers and Functions of the Commissioner.*— The Commissioner shall have the following powers and functions:

(a) x x x;

x x x;

x x x;

(d) Review and decide disputed assessments and other matters related thereto, subject to [review by the Secretary of Finance and] exclusive appellate jurisdiction of the Court of Tax Appeals (CTA);

(e) x x x

x x x

(g) x x x.”

SECTION4. Title III, Chapter II, Section 307, Temporary Storage of Goods of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

"SEC. 307. *Temporary Storage of Goods.*— Subject to the rules and regulations to be issued by the Secretary of Finance, the Commissioner shall establish a system for temporary storage of imports prior to goods declaration **AND** in case of abandoned or overstaying goods."

SECTION5. Title IV, Chapter I, Section 402, Goods Declaration for Consumption of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

"SEC. 402. *Goods Declaration for Consumption.*— x x x;

(a) x x x; and

(b) Personal and household effects or goods, not in commercial quantity.[, imported in a passenger's baggage or mail.]

x x x

x x x."

SECTION6. Title IV, Chapter I,Section 405, Liability of Importer for Duties and Taxes of Republic Act No. 10863 is hereby amended to be read as follows:

"SEC. 405. *Liability of Importer for Duties and Taxes.*— x x x.

"EXCEPT FOR GOVERNMENT IMPORTATION, THE DISTRICT OFFICER SHALL HOLD THE DELIVERY OF IMPORTED OR CONSIGNED GOODS OF AN IMPORTER WITH AN OUTSTANDING AND DEMANDABLE ACCOUNT WITH THE BUREAU. UPON DUE NOTICE TO THE IMPORTER, THE DISTRICT COLLECTOR MAY SELL THE GOODS OR ANY PORTION THEREOF BASED ON THE INVOICE PRICE OR FAIR MARKET VALUE, WHICHEVER IS HIGHER, TO COVER THE PAYMENT OF THE OUTSTANDING ACCOUNT. HOWEVER, THE IMPORTER MAY SETTLE THE OVERDUE OBLIGATION PRIOR TO THE SALE. THE GOODS SHALL BE RELEASED AND DELIVERED TO THE IMPORTER ONLY AFTER PAYMENT OF THE DUTIES, TAXES, AND OTHER CHARGES

WITHOUT PREJUDICE TO CHARGES AND FEES DUE TO THE PORT OR TERMINAL OPERATOR.”

SECTION 7. Title IV, Chapter I, Section 407, Goods Declaration and Period of Filing of Republic Act No. 10863 is hereby amended to be read as follows:

“SEC. 407. Goods Declaration and Period of Filing.— x x x The Bureau shall require the electronic lodgement of the goods declaration.

The Bureau shall only require supporting documents necessary for customs control to ensure that all requirements of the law have been complied with. x x x.

Goods declaration must be lodged AND PAID within fifteen (15) days from the date of discharge of the last package from the vessel or aircraft.
THE PERIOD OF THE LODGEMENT OF THE GOODS DECLARATION MAY BE ADJUSTED BY THE COMMISSIONER.

[The period to file the goods declaration may, upon request, be extended on valid grounds for another fifteen (15) days: Provided, That the request is made before the expiration of the original period within which to file the goods declaration: Provided, However, That the period of the lodgement of the goods declaration may be adjusted by the commissioner].

THE PAYMENT OF DUTIES AND TAXES BASED ON SELF-ASSESSMENT SHALL BE MADE PRIOR OR UPON LODGMENT, AS MAY BE DETERMINED BY THE BUREAU.”

SECTION 9. Title IV, Chapter III, Section 427, Readjustment of Appraisal, Classification or Return of Republic Act No. 10863 is hereby amended to be read as follows:

“SEC. 427. Readjustment of Appraisal, Classification or Return.— x x x
(1) x x x

(2) Within fifteen (15) days after such payment, upon request for reappraisal or reclassification addressed to the Commissioner by the District Collector, if the appraisal or classification is [deemed to be low] **INCORRECT**;

(3) x x x; or

(4) x x x."

SECTION11. Title IV, Chapter III, Section 431, Release of Goods after Payment of Duties and Taxes of Republic Act No. 10863 is hereby amended to be read as follows:

"SEC. 431. *Release of Goods after Payment of Duties and Taxes.*—

Goods declared shall be released when duties and taxes and other lawful charges AS FINALLY ASSESSED BY THE BUREAU have been paid or secured and all the pertinent laws, rules and regulations have been complied with.

x x x."

SECTION14. Title VII, Chapter II, Section 709, Government's Right of Compulsory Acquisition of Republic Act No. 10863 is hereby deleted:

"[SEC709. *Government's Right of Compulsory Acquisition.*— In order to protect government revenues against undervaluation of goods, the Commissioner may, motu proprio or upon the recommendation of the District Collector, acquire imported goods under question for a price equal to their declared customs value plus any duties already paid on the goods, payment for which shall be made within ten (10) working days from issuance of a warrant signed by the Commissioner for the acquisition of such goods.

An importer who is dissatisfied with a decision of the Commissioner pertaining to this section may, within twenty (20) working days after the date on which notice of the decision is given, appeal to the Secretary of Finance, and thereafter if still dissatisfied, to the CTA as provided for in Section 1136 of this Act.

Where no appeal is made by the importer, or upon reaffirmation of the Commissioner's decision during the appeals process, the Bureau or its agents shall sell the acquired goods pursuant to existing laws and regulations.

Nothing in this section limits or affects any other powers of the Bureau with respect to the disposition of the goods or any liability of the importer or any other person with respect to an offense committed in the importation of the goods.]"

SECTION 15. Title VIII, Chapter II, Section 802, Types of Customs Bonded Warehouses (CBWs) of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

"SEC. 802. *Types of Customs Bonded Warehouses (CBWs).*— x x x.

Manufacturing customs bonded warehouse may be of the following types; (a) miscellaneous customs bonded warehouse; (b) **GARMENTS AND TEXTILES BONDED WAREHOUSE;** (C) customs common bonded warehouse; or [(c)] (D) industry-specific bonded warehouse.

x x x."

SECTION 16. Title VIII, Chapter II, Section 806, Customs Control Over CBWs and CFWs of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

"SEC. 806. *Customs Control Over CBWs and CFWs.*— The Bureau shall, for customs purposes, exercise control over, direct and manage CBWs and CFWs pursuant to Section 303 of this Act and likewise over the goods thereat pursuant to Section 301 of this Act[:].

THE BUREAU SHALL MAINTAIN THE NUMBER OF OFF-DOCK CONTAINER YARD OR CONTAINER FREIGHT STATION (CY/CFS) AND CBWs OPERATING IN A PORT TO A NUMBER CONSISTENT WITH THE BUSINESS REQUIREMENTS OF THE PORT.

THE AGGREGATE CAPACITY UTILIZATION (ACU) OF THE EXISTING OFF-DOCK (CY/CFS) SHALL BE CONSIDERED IN NEW APPLICATIONS FOR AUTHORITY TO OPERATE AN OFF-DOCK CY/CFS. IT IS ONLY WHEN THE ACU OF EXISTING CY/CFS FOR THE IMMEDIATELY PRECEEDING TWELVE (12) MONTHS HAVE EXCEEDED FIFTY PERCENT (50%) WILL ANY APPLICATION BE ACCEPTED AND CONSIDERED BY THE BUREAU.

[Provided, That the] THE Bureau shall not be liable for any loss or damage of the goods stored for safekeeping in any CBW, CFW, yard or premises.”

SECTION 17. Title XI, Chapter IX, Section 1135, Supervision and Control over Criminal and Civil Proceedings of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

“**SEC. 1135.** *Supervision and Control over Criminal and Civil Proceedings.*— Civil and criminal actions and proceedings instituted on behalf of the Government under the authority of this Act or other laws enforced by the Bureau shall be brought in the name of the government of the Philippines and shall be prosecuted and handled by the Bureau with the assistance of the Department of Justice (DOJ): Provided, That the determination of the existence of probable cause and the subsequent filing of any criminal [or civil case] with the proper court against violators of this Act shall exclusively belong to the DOJ: *Provided, however,* That no civil or criminal action for the recovery of duties or the enforcement of any fine, penalty or forfeiture under this Act shall be filed in court without the approval of the Commissioner.”

SECTION 18. Title XI, Chapter I, Section 1100, Classification Ruling of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

"SEC. 1100. Classification Ruling.— An importer or exporter may file a written application for an advance ruling on the tariff classification of goods with the Commission. The Commission shall render a ruling within thirty (30) days from receipt of a properly documented application.

When a declared tariff classification of goods, not subject of a pending application for advance ruling, is in dispute **AND THE DISTRICT COLLECTOR DETERMINES THAT IT INVOLVES DIFFICULT OR HIGHLY TECHNICAL QUESTION OF TARIFF CLASSIFICATION**, [the importer, exporter, or] the Bureau shall submit the matter to the Commission for a ruling, without prejudice to the application of Section 1106 of this Act on "protest": Provided, That such rulings of the Commission on commodity classification shall be binding upon the Bureau, unless the Secretary of Finance shall rule otherwise.

FOR THIS PURPOSE, TARIFF CLASSIFICATION SHALL BE CONSIDERED AS DIFFICULT OR HIGHLY TECHNICAL QUESTION WHEN THE GOODS ARE CLASSIFICABLE UNDER MORE THAN ONE AHTN CHAPTER, HEADING OR SUBHEADING; OR THE PRODUCT DESCRIPTION IS NOT SPECIFICALLY PROVIDED FOR IN ANY AHTN HEADING OR SUBHEADING."

SECTION 19. Title XI, Chapter VI, Section 1129, Abandonment, Kinds and Effects of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

"SEC. 1129. Abandonment, Kinds and Effects of.— Imported goods are deemed abandoned under any of the following circumstances;

(a) When the owner, importer, or consignee of the imported goods expressly signifies in writing to the District Collector the intention to abandon the same; or

(b) When the owner, importer, consignee, or interested party after due notice, falls to [file] **LODGE** the goods declaration **AND PAY THE DUTIES AND TAXES BASED ON SELF-ASSESSMENT** within the prescribed period in Section 407 of this Act: *Provided*, That the term goods declaration shall include provisional or incomplete goods

declaration deemed valid by the Bureau as provided in Section 403 of this Act. For this purpose, it is the duty of the District Collector to post a list of all packages discharged and their consignees, whether electronically or physically in the District Office, or send a notice to the consignee within five (5) days from the date of discharge; or

(c) Having ~~[filed]~~ **LODGED** such goods declaration **AND PAID THE DUTIES AND TAXES BASED ON SELF-ASSESSMENT**, the owner, importer, consignee or interested party after due notice, fails to pay the ~~[assessed]~~**READJUSTED** duties, taxes and other charges thereon, or, if the regulated goods failed to comply with Section 117 of this Act, within fifteen (15) days from the date of final assessment: Provided, That if such regulated goods are subject of an alert order and the assessed duties, taxes and other charges thereof are not paid within fifteen (15) days from notification by the Bureau of the resolution of the alert order, the same shall also be deemed abandoned; or

~~[(d) Having paid the assessed duties, taxes and other charges, the owner, importer or consignee or interested party after due notice, fails to claim the goods within thirty (30) days from payment. For this purpose, the arrastre or warehouse operator shall report the unclaimed goods to the District Collector for disposition pursuant to the provisions of this Act;]~~ or

(e) When the owner or importer fails to claim goods in customs bonded warehouses within the prescribed period.

The due notice requirement under this section may be provided by the Bureau through electronic notice or personal service: *Provided*, That for non-regular importers, notification shall be by registered mail or personal service. For this purpose, the accreditation of importers, exporters, and other third parties shall include provision for mandatory receipt of electronic notices."

SECTION 20. Title XI, Chapter X, Section 1147, Disposition of Restricted Goods of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

“SEC. 1147. *Disposition of Restricted Goods.*—Restricted goods as described in Section 119 of this Act shall be disposed as follows:

(a) Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, and parts thereof shall be turned over to the **[AFP]PHILIPPINE NATIONAL POLICE (PNP);**

(b) x x x;

(c) x x x;

(d) x x x;

(e) x x x; and

(f) x x x.”

SECTION 21. Title XIV, Chapter I, Section 1400, Misdeclaration, Misclassification, Undervaluation in Goods Declaration of R.A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

“SEC. 1400. *Misdeclaration, Misclassification, Undervaluation in Goods Declaration.*—Misdeclaration as to quantity, quality, description, weight, or measurement of the goods, or misclassification through insufficient or wrong description of the goods or use of wrong tariff heading resulting to a discrepancy in duty and tax to be paid between what is legally determined upon assessment and what is declared, shall be subject to a surcharge equivalent to two hundred fifty percent (250%) of the duty and tax due. No surcharge shall be imposed when the discrepancy in duty **AND TAX** is less than ten percent (10%), or when the declared tariff heading is rejected in a formal customs dispute settlement process involving difficult or highly technical question of tariff classification, or when the tariff classification declaration relied on an official government ruling.”

SECTION 22. Title XII, Chapter III, Section 1226, Supervision and Regulation of Third Parties of R. A. No. 10863 otherwise known as the CMTA is hereby amended to read as follows:

"SEC. 1226. *Supervision and Regulation of Third Parties.* – x x x

x x x

Upon the recommendation of the Commissioner, the Secretary of Finance shall issue rules and regulations to govern and regulate the conduct, of all third parties dealing directly with the Bureau in relation to the importation, exportation, movement, storage and clearance of goods for and behalf of another person. The rules and regulations shall provide for specific conditions when third parties may or may not [directly] transact with the Bureau and shall provide a written notice in case such third parties are, for valid reasons, barred from transacting with the Bureau. **[WHICH SHALL INCLUDE BLACKLISTING, SUSPENSION, REVOCATION OR CANCELLATION OF THE ACCREDITATION OR REGISTRATION, AS THE CASE MAY BE.** Third party is defined under Section 102 (uu) of this Act. For purposes of this section, third parties may also refer to logistics providers, importers, exporters, carriers, airlines, shipping lines, shipping agents, forwarders, consolidators, port and terminal operators, and warehouse operators, if such persons or entities transacted with the Bureau."

SECTION 23. *Repealing Clause.* – All laws, decrees, executive orders, issuances or regulations inconsistent with the provisions of this Act hereby revised or amended accordingly.

SECTION 24. *Separability Clause.*– If any part of this Act is declared unconstitutional or invalid such parts or provisions thereof not so declared shall remain valid and subsisting.

SECTION 25. *Effectivity Clause.*– This Act shall take effect fifteen (15) days after its publication in at least one (1) newspapers of general circulation.

Approved.