REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NESTLE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5265

THE COMMISSIONER OF CUSTOMS AND COMMISSIONER OF INTERNAL REVENUE,
Respondents.

Promulgated:
JUL 10 2000

x - x

DECISION

This is a claim for refund filed by Petitioner on July 11, 1995 against Respondents in the aggregate amount of ₱3,415,531.00, allegedly representing duties and taxes unlawfully assessed and collected on its five (5) importations of skimmed and instant milk powder which arrived at the Manila International Container Port ("MICP" for brevity), Port of Manila, during the period September 1992 up to March 1993.

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with office address at Jade Building, 335 Sen. Gil J. Puyat Avenue Extension, Makati City, Metro Manila. It is a regular importer of milk and milk products and is engaged in the manufacture, processing, distribution and sale of processed, manufactured and formulated milk and milk products.

The case at bar is an offshoot of five protest cases filed by Petitioner with the District Collector of Customs of MICP on the much higher valuation arrived at by the Societe Generale de Surveillance ("SGS", for short)[1] in its Clean Report of Findings, hereinafter referred to as "CRF"[2], which were duly issued on each of aforesaid importations *vis a vis* their actual invoice value.

Pursuant to the provisions of Paragraph IV-No. 12 of Customs Memorandum Order No. 39-92, questions surrounding the SGS-CRFs' higher valuation were then appealed by Petitioner to the Bureau of Customs-SGS Import Valuation and Classification Committee, heretofore called as the "Committee", under the Office of Respondent Commissioner

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[1]. A multinational entity authorized by the Government to inspect, through a Comprehensive Import Supervision Service, the quality, quantity, price and dutiable value of goods destined for importation into the Philippines, as well as to verify the classification and tariff rate of such goods under the Tariff and Customs Code of the Philippines - Joint Order No. 1-91, as amended issued by the Department of Finance, Department of Trade and Industry and the *Bangko Sentral ng Pilipinas*.

[2]. An inspection report issued by SGS on imported goods entering Philippine customs territory.

of Customs ("COC", for short). Petitioner was convinced that pursuant to Section 201 of the Tariff and Customs Code of the Philippines ("Code" for brevity), the invoice value should be the basis of the dutiable value of its shipment of goods and not on the much higher CRFs'.

In the meantime that the Committee was still deliberating on said appeals, Petitioner's shipments were tentatively liquidated and released in accordance with Customs Memorandum Order Nos. 51-92 and 12-93.

The Committee later on issued various resolutions modifying the valuations provided in the original CRFs' based on "EEC[3] domestic price as published in Europe less normal cash discount". It turned out, however, that the modified valuations were still much higher than the invoice value. Nonetheless, the District Collector of Customs relied eventually on such revised valuations in making a recomputation of additional duties and taxes on the above mentioned importations, which Petitioner paid under protest.

A comparison of the invoice value with that of the amended valuations of the SGS as well as the corresponding time of filing of protest and date and

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[3]. Refers to "European Economic Community"

amount of payments on the five (5) importations are hereunder enumerated, to wit:

I. MICP PROTEST CASE No. 394-93 filed on Dec.22, 1993
Skimmed Milk Powder - Medium High Heat from Ireland
CONSUMPTION ENTRY NO. 72626-93
Paid under BOC O.R. # 44815951, dated December 22, 1993

	INVOICE 1,783.58/mt	SGS 2,210.76/mt
Invoice Value	428,059.20	530,582.40
Insurance	612.00	0.00
Freight	20,400.00	16,221.49
Other Charges	20,160.00	12,214.94
Total US$ Invoice	469,231.20	559,018.83
Total in Peso	11,731,718.46	13,976,588.79
Customs Duty	1,173,171.85	1,397,658.88
Taxable Value	11,731,718.46	13,976,588.79
Bank Charges	14,644.65	17,470.74
Customs Duty	1,173,171.85	1,397,658.88
Brokerage	14,837.42	14,837.42
Customs Stamps	31.50	31.50
IPF	250.00	250.00
Wharfage	5,992.50	5,992.50
Arrastre	16,200.00	16,200.00
Amount Subject to 10% Value Added Tax:		
	12,956,866.38	15,429,029.83
	1,295,686.64	1,542,902.98

Difference	₱	247,216.34
Plus difference of Customs Duty		224,487.03
Total Amount Paid:	**₱**	471,703.00

II. MICP PROTEST CASE No. 393-93 filed on December 29, 1993
Skimmed Milk Powder - Medium High Heat from Ireland
CONSUMPTION ENTRY NO. 70058-93
Paid under BOC O.R. # 44815967, dated December 22, 1993

	INVOICE 1,783.58/mt	SGS 2,210.76/mt
Invoice Value	142,062.15	176,087.03
Insurance	203.11	0.00
Freight	6,770.25	5,405.38
Other Charges	6,690.60	6,720.00
Total US$ Invoice	155,726.11	188,212.41
Total in Peso	3,903,274.95	4,717,544.06
Customs Duty	390,327.49	471.754.41
Taxable Value	3,903,274.95	4,717,544.06
Bank Charges	4,879.09	5,896.93
Customs Duty	390,327.49	471.754.41
Brokerage	6,346.22	6,346.22
Customs Stamps	31.50	31.50
IPF	250.00	250.00
Wharfage	1,997.50	1,997.50
Arrastre	5,400.00	5,400.00

Amount Subject to 10% Value Added Tax:		
	4,312,506.75	5,209,220.62
	431,250.68	520,922.06
Difference	₱ 89,671.38	
Plus difference of Customs Duty	₱ 81,426.92	
Total Amount Paid:	**₱ 171,098.30**	

III. MICP PROTEST CASE No. 329-93a filed on July 16, 1993
Instant Milk Powder 28% from Denmark
CONSUMPTION ENTRY NO. 22713-93
Paid under BOC O.R. # 42629237, dated July 14, 1993

	INVOICE 1,588.54/bag	SGS 2,661.75/bag
Invoice Value	160,454.40	257,448.00
Insurance	249.60	0.00
Freight	5,777.20	6,026.89
Other Charges	0.00	7,723.20
Total US$ Invoice	166,481.20	271,198.09
Total in Peso	4,236,946.54	6,901,991.31
Customs Duty	847,389.31	1,380,398.26
Taxable Value	4,236,946.54	6,901,991.31
Bank Charges	5,296.18	8,627.49
Customs Duty	847,389.31	1,380,398.26
Brokerage	7,408.68	7,408.68
Customs Stamps	53.00	53.00
IPF	250.00	250.00
Wharfage	2,397.00	2,397.00
Arrastre	9,912.00	9,912.00

Amount Subject to 10% Value Added Tax:

	5,109,652.71	8,311,037.74
	510,965.27	831,103.77
Difference	₱	320,139.00
Plus difference of Customs Duty	₱	533,008.95
Total Amount Paid:	**₱**	853,147.95

IV. MICP PROTEST CASE No. 334-93 filed on July 16, 1993
Instant Milk Powder 28% from Denmark
CONSUMPTION ENTRY NO. 22714-93
Paid under BOC O.R. # 42629212, dated July 14, 1993

	INVOICE 1,588.54/bag	SGS 2,661.75/bag
Invoice Value	160,454.40	257,448.00
Insurance	249.60	0.00
Freight	5,777.20	6,026.89

Other Charges	0.00	7,723.20
Total US$ Invoice	166,481.20	271,198.09
Total in Peso	4,236,946.54	6,901,991.39
Customs Duty	847,389.31	1,380,398.28
Taxable Value	4,236,946.54	6,901,991.39
Bank Charges	5,296.18	8,627.49
Customs Duty	847,389.31	1,380,398.28
Brokerage	7,408.68	7,408.68
Customs Stamps	53.00	53.00
IPF	250.00	250.00
Wharfage	2,397.00	2,397.00
Arrastre	9,912.00	9,912.00

Amount Subject to 10% Value Added Tax:

	5,109,652.71	8,311,037.82
	510,965.27	831,103.78
Difference	₱	320,138.00
Plus difference of Customs Duty	₱	533,008.97
Total Amount Paid:	₱	853,146.97

V. MICP PROTEST CASE No. 334-93a filed on July 16, 1993
Instant Milk Powder 28% from Denmark
CONSUMPTION ENTRY NO. 22715-93
Paid under BOC O.R. # 42629221, dated July 14, 1993

	INVOICE 1,588.54/bag	SGS 2,661.75/bag
Invoice Value	200,568.00	321,810.58
Insurance	312.00	7,533.00
Freight	7,221.60	9,654.12
Other Charges	0.00	0.00
Total US$ Invoice	208,101.60	338,997.70
Total in Peso	5,296,185.72	8,627,491.47
Customs Duty	1,059,237.14	1,725,498.29
Taxable Value	5,296,185.72	8,627,491.47

Bank Charges	6,620.23	10,784.36
Customs Duty	1,059,237.14	1,725,498.29
Brokerage	8,732.73	8,732.73
Customs Stamps	53.00	53.00
IPF	250.00	250.00
Wharfage	2,996.25	2,996.25
Arrastre	12,390.00	12,390.00
Amount Subject to 10% Value Added Tax:		
	6,386,465.07	10,388,196.10
	638,646.51	1,038,819.61
Difference		₱ 400,173.00
Plus difference of Customs Duty		₱ 666,261.15
Total Amount Paid:		₱ 1,066,434.15

GRAND TOTAL OF AMOUNT PAID/ (FOR REFUND): ₱3,415,520.74

Concommittant with the protests, Petitioner filed with Respondent Commissioner of Internal Revenue's Appellate Division on July 3, 1995, a written claim for refund of value added taxes paid, supra, corresponding to each of the five importations involved herein which, separately, were paid either on July 14, 1993 or December 22, 1993.

A few days later, that is on July 11, 1995, and without awaiting the decision of the District Collector of Customs on the protests, Petitioner filed the instant Petition for Review before this Court allegedly based on Respondents' inaction or silence for almost two (2) years of its claims for refund of excess duties and value-added taxes.

At bar, Petitioner reiterates its observation on the provisions of Section 201 of the Code. It asserts that the invoice value reflects the correct fair market value of the imported article and should therefore be the principal basis of determining its dutiable value.

Petitioner contends that before the invoice value is disregarded, just like what the District Collector of Customs did in this case, it must be established first that reasonable doubt exists as to the value or price of the imported article declared in the entry; that after reasonable doubt has been ascertained, recourse to reports from commercial attaches' or other information must be shown to have been observed in coming out with the latest dutiable value; and finally, citing the case of **Commissioner of Customs vs. Court of Tax Appeals, 161 SCRA 376 at pp. 381-382 [1988]** such new dutiable value should have been priorly published.

It is the perceived analysis of the Petitioner that Respondent COC has failed to comply with any of the three requisites aforestated. It argues that reasonable doubt as to the correctness of the declaration has not been established there being no "alert notice" issued against the imported articles or any showing as to how the SGS ascertained and established its CRF value of the imported articles, or where and when such SGS' values were published.

Petitioner strongly takes issue against the status and activities of the SGS as follows, to wit:

> The respondent's reliance on SGS valuations of imported articles is misplaced. SGS is not exempt from complying with the requirements of the law. In fact, SGS cannot be above the law.
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> Moreover, unlike government employees and agency, SGS does not enjoy the legal presumption of regularity in the performance of its functions, being a private and foreign owned enterprise with officers and employees not covered by the Civil Service law. As such it must show competent proof as to how it arrived at its own valuations on the subject importations.
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> As it is, SGS bases and data sources are unknown. The methodology used, if any, is improper. Its scheme of mathematically adding to the invoice cost any amount which purportedly corresponds to subsidy of European countries being extended to their exporting companies, is highly anomalous, and bereft of legal and factual basis. This is so because:
>
> > Firstly, it has not been established as to whether there was really such European subsidy, who grants the subsidy, who are the recipients, what forms of subsidy and kinds of benefit, who enjoys them, how much money was involved, how it off-set the selling price, and how much corresponds exactly for each exported dairy product, how was it

computed, what are the sources of the data being used, and how reliable are those data;

Secondly, the supposed EEC subsidy, if any, must have been the result of competitive export pricing following the universal law of supply and demand - mainly an inventive to sustain a country's dairy industry, increase its foreign exchange inflows, and achieve a favorable balance of trade. As aptly observed by the Secretary of Justice, thus:

> "Contemporary history shows that economic progress of nations are achieved mainly by relying more on international trade than the development of the domestic market for the products of their agriculture and industry. Among the reasons for this is a developing country's need for foreign exchange and the desire to achieve a favorable balance of trade." (Department of Justice's Opinion No. 37, Series of 1992);

Thirdly, government subsidy is not a valid reason to increase dutiable value as the law explicitly provides the basis of dutiable value which is the cost or fair market value. And, the phrase "fair market value" had been defined as the price at which one is willing to sell, would sell, and a person willing to buy, would buy, both being familiar with all the facts, and the seller not being forced to sell or the buyer forced to buy." (French Dry Cleaning

> Co. v. Commissioner of Internal Revenue, C.C.A. Ga. 72 F .2d 167).
>
> Fourthly, to add-up such government subsidy to the cost or price is incongruous with international laws on sovereignty of nations. For, in effect, herein respondents without any sanction of law, is taxing and penalizing Filipino importers and consumers on account of the foreign nations' liberality to their traders, even when the granting of subsidy by foreign countries is a matter of government policy in the exercise of their respective sovereignty, which is beyond the control of importing countries;

> Ineluctably, there is no valid reason to impose a higher dutiable value on the subject importations. The SGS valuations relied upon by the Customs Collector were made arbitrarily without the requisite publication, and are unjust, illegal, bereft of proper basis, and were done in gross contravention of the law.

(Memorandum for the Petitioner, pp. 9-11)

On his part, Respondent COC ripostes, in his memorandum that Petitioner is not entitled to the refund of the additionally imposed duties and taxes which were paid under protests. He contends that while he agreed with Petitioner's stance that the home consumption value of imported article should be the value or price declared in the consular, commercial, trade or sales invoice, the same should not apply in the case at bar inasmuch as there exist a reasonable doubt as to the correctness of the value or price of the imported article declared in the entry. As such, he concludes that the correct dutiable value of the article should be the value recommended by the SGS in its Clean Report of Findings which was adopted by the Collector of Customs and not the invoice value declared by Petitioner in its consumption entries.

Respondent COC explains that SGS is an international firm of good reputation which services the Philippine government, hired purposely to provide it with the real home consumption value or price of goods imported into the country for Tariff and Customs purposes. He emphasizes that under Joint Order No. 1-91, SGS valuation is merely recommendatory in nature and is not conclusive upon the Bureau of Customs. However, once the Collector of Customs adopts the CRF value as endorsed by the Customs Examiner/Appraiser, he believes that it is no longer considered a mere SGS-CRF value, but for tariff and customs purposes, such value is deemed the official customs value of articles and any party, including the importer, who questions said valuation has the burden of proving that the same is wrong or arbitrary *vis a vis* its presumption of regularity, citing the case of *Coca-Cola Export Corporation vs. The Commissioner of Internal Revenue, G.R. No. L-23604, March 15, 1974, 56 SCRA 5, as* *cited in the case of Commissioner of Customs vs. Court of Tax Appeals, 195 SCRA 12.*

Respondent COC recalls that during the proceedings at the Committee, it was established that the basis of SGS value was the actual price, per seller's (exporter's) invoice, plus the restitution paid to the exporters according to the EEC agreements, viz., EEC Regulation No. 804/68, dated June 27, 1968. Based on this information, he contends that his Bureau is correct in adopting SGS recommended value as the true and correct price of the goods in issue, most especially that Section 201 of the Code speaks of home consumption value or price of an imported article based on some, like or similar articles, as bought and sold or offered for sale *freely* in the usual wholesale quantities in the ordinary course of trade, in the principal markets on the date of exportation to the Philippines.

Respondent COC further elaborates that the intervention by the European Governments in the *ordinary course of trade* between the seller/exporter and the buyer/importer has in effect removed the element of *freedom* being ordained by Section 201. He quips that the policy by the EEC of restituting/refunding the supplier in Europe with export subsidy has created two regimes of pricing in their community, one for the domestic market in the country of supply, and the other, a much lower price for those intended for export.

Prescinding from the above, a brief interlude into the history of this case is noteworthy. Records show that upon a motion to dismiss filed by Respondent COC, the latter was dropped as an indispensable party in the case at bar on the ground of prematurity/lack of jurisdiction, there being no decision of the District Collector of Customs as yet, much more by herein Respondent COC. As regards Respondent Commissioner of Internal Revenue, he was maintained as a party litigant in view of the near expiry of the two-year period within which refund of taxes paid may be availed of, as provided under Section 230 of the applicable Tax Code (CTA Resolution, dated December 4, 1995).

As events would unfold, however, We decided to reinstate Respondent COC as main party litigant to herein case (CTA Resolution, dated August 21, 1998) after realizing that the determination of the instant refund being sought by Respondent Commissioner of Internal Revenue for value added taxes, which is fixed at the rate of 10% of the value of the imported goods, is dependent upon the final valuation arrived at by Respondent COC. With the latter not joined as a litigant, procedural due process simply proscribes Us from making any attempt to review the valuations he has made.

Fortunately also, this Court's acquisition of jurisdiction over the person of Respondent COC is supported by the Honorable Supreme Court's pronouncement in the case of **Commissioner of Customs and Commissioner of Internal Revenue vs. Court of Tax Appeals and Planters Products, Inc., G.R. No. 82618, March 16, 1989,** (CTA Resolution, ibid.) where it was decreed that the taxpayer need not wait indefinitely for a decision of the Collector or Commissioner of Customs which may or may not be forthcoming and which he has no legal right to expect. *A fortiori*, this Court reversed its previous resolution in order to conform with such jurisprudence established by the Highest Court.

Going back to the main discussion, We observe that based on the joint stipulation of facts of the Petitioner and Respondent COC, the following are the issues involved in the case at bar, to wit:

> "1. Whether or not SGS' valuations are arbitrary and unjust; and,
>
> 2. Whether or not Petitioner is entitled to refund of the additionally imposed duties and taxes which were paid under protests.

After a meticulous analysis of the preceding facts, the argumentation of the parties and the laws and jurisprudence in point, We rule in favor of Respondents' COC and Commissioner of Internal Revenue.

For easy understanding, the provisions of Section 201 of the Code are hereby reproduced *in toto*, to wit:

> **Sec. 201.** ***Basis of Dutiable Value.*** - The dutiable value of an imported article subject to an ad valorem rate of duty shall be based on the cost (fair market value) of same, like or similar articles, as bought and sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade in the principal markets of the exporting country on the date of exportation to the Philippines (excluding internal excise taxes to be remitted or rebated) or where there is none on such date, then on the cost (fair market value) nearest to the date of exportation, including the value of the containers, coverings and/or packings of any kind and all other expenses, costs and charges incident to placing the article in a condition ready for shipment to the Philippines, and freight as well as insurance premium covering the transportation of such articles to the port of entry in the Philippines.
>
> Where the fair market value or price of the article cannot be ascertained thereat or where there exists a reasonable doubt as to the fairness of such value or price, then the fair market value or price in the principal market in the country of manufacture or origin, if it is not the country of exportation, or in a third country with the same stage of economic development as the country of exportation shall be used.
>
> When the dutiable value of the article cannot be ascertained in accordance with the preceding paragraphs or where there exists a

reasonable doubt as to the cost (fair market value) of the imported article declared in the entry, the correct dutiable value of the article shall be ascertained by the Commissioner of Customs from the reports of the Revenue or Commercial Attache (Foreign Trade Promotion Attache), pursuant to Republic Act Numbered Fifty-four Hundred and Sixty-six or other Philippine diplomatic officers or Customs Attaches and from such other information that may be available to the Bureau of Customs. Such values shall be published by the Commissioner of Customs from time to time.

When the dutiable value cannot be ascertained as provided in the preceding paragraphs, or where there exist a reasonable doubt as to the dutiable value of the imported article declared in the entry, it shall be the domestic wholesale selling price of such or similar article in Manila or other principal markets in the Philippines on the date the duty become payable on the article under appraisement, on the usual wholesale quantities and in the ordinary course of trade minus

(a) not more than twenty-five (25) per cent thereof for expenses and profits; and

(b) duties and taxes paid thereon."

(As amended by E.O. 156.)

The issues at bar being intertwined, a common discussion thereof is in order.

A reading of the above quoted provisions of Section 201 would unquestionably show that as a general rule, the home consumption value or price of an imported article subject to an *ad valorem* rate of duty shall be the value or price declared in the consular, commercial, trade or sales invoice. As an exception, however, where there exists a reasonable doubt as to the value or price of the imported article declared in the entry, the correct dutiable value of the article shall be ascertained from the reports of the Revenue Attache or Commercial Attache (Foreign Trade Promotion Attache), pursuant to Republic Act Numbered Fifty four hundred and sixty-six, or from other Philippine diplomatic officers and such other information that may be available to the Bureau of Customs.

Clearly speaking, consular, sales, trade or commercial invoices are not binding upon the government. In the case of **Caltex (Philippines), Inc. vs. Court of Appeals, 292 SCRA 273, G.R. No. 140781, July 10, 1998,** the Honorable Supreme Court, citing the case of **Lim Quim vs. Collector of Customs, 23 Phil. 509 (1912),** pronounced, thus:

> '' Our conclusion is premised on the fact that sales, commercial or consular invoices are not conclusive on the government. Our customs laws should not be at the mercy of importers who may avail of schemes and other arrangements to lower and reduce the face value of the articles covered by such invoices. Noteworthy is the fact that: "If the customs authorities were bound by the invoice value, it is evident that they would be, to a considerable extent,

> at the mercy of foreign merchants and importers. The purpose of Congress in providing for an appraiser was to prevent fraud upon the customs, and thus protect the revenues of the Government."

Verily, the authority of Respondent COC to resort to other means of ascertaining fair market value in the event that reasonable doubt exists on the invoice value is manifest from the provisions of Section 201 and in our jurisprudence. Fortunately, there is no disagreement among the parties on this point of law.

However, what presents as the very pith of herein controversy by the parties is the factual question of whether or not there exists an actual reasonable doubt on the invoice value as found by the District Collector of Customs based upon the findings of SGS.

Petitioner is convinced that such reasonable doubt is bereft of factual basis. As stated above, it asserts that there was no "alert notice" ever issued on its shipments; and that there was neither any showing as to how SGS ascertained and established the CRF values of the questioned goods nor where and when such values were published in accordance with Section 201 of the Code. Altogether, Petitioner accuses Respondents' COC and Commissioner of Internal Revenue of grave abuse of discretion, without or in excess of jurisdiction and in gross violation of the law.

We are not swayed by Petitioner's ratiocination. In Our opinion, the much higher valuations of SGS has, in effect, created a well-meaning reasonable doubt on the truthfulness and accuracy of the value or price of the imported article declared in the entry. Hence, it is no error for the District Collector of Customs to disregard the invoice value and adopt instead as the fair market value or the true and correct home consumption value, the Committee's recommendation of invoice value plus the restitution/refund paid to the sellers/exporters. With this rationale, the necessity of "alert notice" as insisted by the Petitioner is immaterial already.

We agree with Respondent COC that SGS is an international firm of good reputation. The singular fact that it has been chosen and awarded by the Government of contract services to specifically inspect and provide real values/prices of products imported into the country for tariff and customs purposes is proof enough of its competence and expertise in that particular field.

With regard to the findings of SGS itself, Respondent COC has convincingly shown before this Court that EEC has been subsidizing its export products by way of refunds which effectively created two regimes of pricing in their community, one for the domestic market in the country of supply, and the other, a much lower price for those intended for export **(Article 17 of EEC Regulation No. 804/68, dated June 27, 1968; Exhibits 2-d and 2-d-2)**. As it works, the price difference between the two regimes is covered by an export refund. In this way, EEC exporters are able to quote lower competitive prices for exports while their domestic prices are variedly much higher.

Under the foregoing circumstance, Respondent COC is correct in saying that Petitioner's invoice value, which has been the beneficiary of EEC government subsidy, is not the true and correct home consumption value contemplated under Section 201 of the Code. He contends that the invoice value does not represent goods or articles that have been bought "freely" in the ordinary course of trade in the *principal markets* of the exporting country.

A close scrutiny of the provisions of Section 201 of the Code would indeed disclose that dutiable value should be based on articles bought and sold or offered for sale "freely" in the ordinary course of trade in the *principal markets* of the exporting country on the date of exportation to the Philippines. This being the case, the Committee committed no reversible error in adjusting the invoice value to EEC domestic prices.

It is to be noted that Respondent COC has endeavored to prove somehow the basis for the assailed SGS valuations, despite the procedural rule that places the *onus probandi* on the importer to not only prove the contrary and overcome the presumption of correctness of customs valuation but also to show that the figures declared by him are in fact true and correct (**Coca-Cola Export Corporation vs. The Commissioner of Internal Revenue, 56 SCRA 5, as cited in Commissioner of Customs vs. Court of Tax Appeals, 195 SCRA 12**).

Likewise, We disagree with Petitioner that Respondent COC's valuation are arbitrary and unjust for failing to comply with the requisite publication of the new dutiable value.

Without any qualm or quibble, We are certain that Section 201 of the Code does not require prior publication of new dutiable value before it can serve as the basis of assessment of customs duty and taxes. As aptly explained by the Honorable Supreme Court in the case of **Commissioner of Customs vs. Procter and Gamble Philippines Manufacturing Corp., 169 SCRA 693**, We quote:

> "The posture taken by private respondent is untenable. A reading of Section 201 of the Tariff and Customs Code aforecited shows that where there exists reasonable doubt as to the

value or price of the imported article declared in the entry, the correct dutiable value of the article shall be ascertained from the reports of the Revenue Attache or Commercial Attache (Foreign Trade promotion Attache) x x x or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs.' This is what is called the "established" or "information" value. Such value shall be the home consumption value of the imported article which shall be the subject of customs duty and taxes.

The same article then provides:

From the data thus gathered, the Commissioner of Customs shall ascertain and establish the home consumption values of articles exported to the Philippines and shall publish such lists of values from time to time *(Sec. 201 of the TCCP)*

The law does not provide that it is only after the "established" or "information" value is "published" that such home consumption value may be the basis of assessment of the customs duty and taxes. On the contrary, it is explicitly provided that upon reasonable doubt as to the accuracy of the declared value of the article in the consular or commercial invoice, the Commissioner of Customs may determine its home consumption value from other available and more reliable sources which "established" or "information" value shall then be the basis of the imposition of the customs duty and taxes. The publication of said "established or "information" value is not a prerequisite before it may be the basis of the imposition of customs duty and taxes. Conversely, it's non-publication is no obstacle to the assessment of customs duty and taxes based on such "established" or "information" value. The publication is intended as guide in the assessment of future shipment of similar

> articles. While such published value of an imported article is reliable, nevertheless, in the absence of the same, the Commissioner of Customs may establish said value from other sources as above provided by law."

Altogether, We find the actions taken by the Committee and the District Collector of Customs to be just, proper and in accordance with law. Accordingly, herein claim for refund is found to be without basis in fact and in law.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge