

Friday, December 17, 1999



REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF FINANCE  
BUREAU OF CUSTOMS  
MANILA

**CUSTOMS ADMINISTRATIVE ORDER  
NO. 2-99**

**SUBJECT : RULES AND REGULATIONS IMPLEMENTING SECTION 1 OF REPUBLIC ACT NO. 8181 AMENDING SECTION 201 OF TITLE II PART I OF PRESIDENTIAL DECREE NO. 1464 OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED, ON THE DETERMINATION OF CUSTOMS DUTIABLE VALUE.**

By authority of Section 4 of Republic Act No. 8181, the following rules and regulations are hereby promulgated:

**I. COVERAGE**

This Order shall cover shipments exported to the Philippines on 01 January 2000 or thereafter. All shipments exported prior to 01 January 2000 shall continue to be assessed based on the old Export Value System.

**II. DUTIABLE VALUE**

The dutiable value of imported goods shall be determined using one of the six methods of valuation listed below. These methods must be applied in sequence. The only exception is that the sequence of Methods 4 and 5 may be reversed at the request of the importer unless there shall be a demonstrated difficulty in the use of Method 5, in which case the Commissioner can reject such request. The methods are as follows:

**A. Method 1: The Transaction Value**

The dutiable value for an imported article shall be the Transaction Value which is the price actually paid or payable for the goods when sold for export to the Philippines adjusted in accordance with the provisions of A.2 of this Order, and subject to the conditions specified in A.1 therein.

1. The dutiable value shall be the Transaction Value if all the following conditions are satisfied:
  - (a) There must be a sale for export to the Philippines;

- (c) Duties and taxes of the Philippines; and
- (d) Other permissible deduction allowed under the WTO Valuation Agreement.

**B. Method 2: The Transaction Value of Identical Goods.**

If the dutiable value of imported goods cannot be determined under the provisions of Section I.A of this Order, the dutiable value shall be the transaction value of identical goods sold for export to the Philippines and exported at or about the same time as the goods being valued. The sale involving such identical goods must also be at the same commercial level and in substantially the same quantity as the goods being valued.

1. Definition of identical goods:

- (a) Identical goods are defined as goods, which are:
  - (i) the same in all respects including:
    - physical characteristics,
    - quality, and
    - reputation,
  - (ii) produced in the same country as the goods being valued, and
  - (iii) produced by the producer of the goods being valued;
- (b) The definition of identical goods excludes imported goods for which engineering, development, artwork, design work, and plans and sketches is undertaken in the Philippines and is provided by the buyer to the producer of the goods free of charge or at a reduced cost;
- (c) Where there are no identical goods produced by the same person in the country of production of the goods being valued, identical goods produced by a different person in the same country may be taken into account;

- (d) Minor differences in appearance would not preclude goods which otherwise conform to the definition from being regarded as identical.

2. If no sale of identical goods at the same commercial level and in substantially the same quantity as the goods being valued is found, the transaction value of identical goods sold at a different commercial level and/or in different quantity may be utilized. Such transaction value of identical goods shall be adjusted upwards or downwards to account for demonstrated differences between the goods being valued and the identical goods, to take account of:

- (a) Commercial level differences;
- (b) Quantity differences; and
- (c) Significant differences for transportation costs due to variances in the mode and/or distance of transport.

**E. Method 5: The Computed Value**

Under this method, the dutiable value is determined on the basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of exportation to the Philippines of goods of the same class or kind.

1. The Dutiable value may be calculated as follows:

- (a) Determine the aggregate of the relevant costs, charges and expenses or the value of:
  - (i) materials employed in producing the imported goods, and
  - (ii) production or other processing costs for the imported goods (direct and indirect labor, factory overheads);
- (b) The following are to be added if not included in (i) and (ii) above:
  - (i) Cost of Containers which are treated as being one for Customs purposes with the goods in question
  - (ii) Cost of packing whether for labor or materials
  - (iii) Assists (apportioned in a reasonable manner in accordance with generally accepted accounting principles),
  - (iv) Engineering, development, artwork, design work, and plans and sketches undertaken in the Philippines and charged to the producer;
- (c) Add amounts for profit and general expenses, usually reflected in export sales to the Philippines, by producers in the country of export of goods of the same class or kind;
- (d) Add the cost of transport, insurance and related charges to the port or place of importation.

**F. Method 6: The Fallback Value**

When the dutiable value cannot be determined under any of the previous methods of valuation, it shall be determined by using other reasonable means consistent with the principles and general provisions of GATT 1994, the agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade as contained in the Uruguay Round Final Act, and on the basis of data available in the Philippines.

**III. ADMINISTRATIVE PROVISIONS**

**G. Currency Conversion**

Where the conversion of currency is necessary for the determination of the dutiable value, the rate of exchange to be used shall be that duly published by the *Bangko Sentral ng Pilipinas* and shall reflect as effectively as possible, in respect of the period covered by each such docu-

### A. Method 1: The Transaction Value

The dutiable value for an imported article shall be the Transaction Value which is the price actually paid or payable for the goods when sold for export to the Philippines adjusted in accordance with the provisions of A.2 of this Order, and subject to the conditions specified in A.1 therein.

1. The dutiable value shall be the Transaction Value if all the following conditions are satisfied:

- (a) There must be a sale for export to the Philippines;
- (b) There must be no restrictions as to the disposition or use of the goods by the buyer, other than restrictions which:
  - (i) Are imposed or required by law or by Philippine authorities;
  - (ii) Limit the geographical area in which the goods may be resold, or
  - (iii) Do not substantially affect the value of the goods;
- (c) The sale or price must not be subject to some conditions or considerations for which a value cannot be determined with respect to the goods being valued;
- (d) No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of A.2 of this Order; and
- (e) The buyer and the seller are not related or where they are related, such relationship did not influence the price of the goods. The buyer and the seller shall be deemed to be related only if:

- they are officers or directors of one another's businesses;
- they are legally recognized partners in business;
- they are employer and employee;
- any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person; or
- they are related by affinity or consanguinity up to the fourth civil degree.

If the buyer and seller are related, the use of the transaction value method is acceptable if:

- (i) the circumstances surrounding the transaction demonstrate that the relationship did not influence the price actually paid or payable, or
- (ii) the transaction value closely approximates to one of the following occurring at or about the same time:
  - The transaction value in sales to unrelated buyers of identical goods or similar goods for export to the Philippines; or
  - The deductive value of identical or similar goods determined in accordance with Method 4; or
  - The computed value of identical or similar goods determined in accordance with Method 5.

2. In determining the Transaction Value, the following adjustments shall be added to the price actually paid or payable for the imported goods being valued if such value has not been included in the price actually paid or

substantially the same quantity as the goods being valued is found, the transaction value of identical goods sold at a different commercial level and/or in different quantity may be utilized. Such transaction value of identical goods shall be adjusted upwards or downwards to account for demonstrated differences between the goods being valued and the identical goods, to take account of:

- (a) Commercial level differences;
- (b) Quantity differences; and
- (c) Significant differences for transportation costs due to variances in the mode and/or distance of transport.

### C. Method 3: The Transaction Value of Similar Goods

If the dutiable value of imported goods cannot be determined under the preceding methods, the dutiable value shall be the transaction value of similar goods sold for export to the Philippines and exported at or about the same time as the goods being valued. The sale involving such similar goods must also be at the same commercial level and in substantially the same quantity as the goods being valued.

1. Definition of similar goods:

- (a) Similar goods are defined as goods which, although not alike in all respect,
  - (i) have like characteristics and like component materials;
  - (ii) are capable of performing the same functions as the goods being valued;
  - (iii) are commercially interchangeable with the goods being valued;
  - (iv) are produced in the same country of the goods being valued; and
  - (v) are produced by the producer of the goods being valued.

(b) The definition of similar goods excludes imported goods for which engineering, development, artwork, design work, and plans and sketches is undertaken in the Philippines and is provided by the buyer to the producer of the goods free of charge or at a reduced cost;

(c) Where there are no similar goods produced by the same person in the country of production of the goods being valued, similar goods produced by a different person in the same country may be taken into account.

2. Where no sale of similar goods at the same commercial level and substantially the same quantity as the goods being valued is found, similar goods at different commercial level and/or in different quantity may be utilized. Such transaction value of similar goods shall be adjusted upwards or downwards to account for demonstrated differences between the goods being valued and the similar goods, to take account of:

- (a) Commercial level differences;
- (b) Quantity differences; and
- (c) Significant differences for transportation cost due to variances in the mode and/or distance of transport.

### D. Method 4: The Deductive Value

By this method, the dutiable value is determined on the basis of sales in the Philippines of the goods being valued or of identical or similar imported goods, less certain specified expenses resulting from the importation and sale of the

Tariffs and Trade as contained in the Uruguay Round Final Act, and on the basis of data available in the Philippines.

## III. ADMINISTRATIVE PROVISIONS

### G. Currency Conversion

Where the conversion of currency is necessary for the determination of the dutiable value, the rate of exchange to be used shall be that duly published by the *Bangko Sentral ng Pilipinas* and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the Philippines.

The conversion rate to be used shall be that in effect as provided for in Customs Memorandum Order No. 24-95.

### H. Release Under Bond

If in the course of determining the dutiable value of imported goods, delay will necessarily ensue in the final determination of such dutiable value, the importer may secure the release of the imported goods from Customs provided,

1. The importer pays the duties and taxes due based on his declaration; and
2. The importer puts up a bond in the form of cash and/or Manager's/Cashier's Check in an amount equivalent to the additional duties and taxes due, computed by Customs using one of the applicable alternative methods of valuation, plus 25% thereof.

### I. Customs Audit

All entry declaration may be subject to Post Entry Audit.

### J. Appeals

Importers who are not satisfied with the dutiable value determined by Customs could file an appeal in accordance with the Appeals/Protest procedures pursuant to the Tariff and Customs Code of the Philippines, as amended, provided that the appropriate docket fee be first paid according to the following schedule:

Protested Amount (in PhP)	Docket Fee
P50,000.00 and below	P500.00
P50,001.00 to P100,000.00	P600.00
P100,000.01 to P200,000.00	P700.00
P200,001.00 to P300,000.00	P800.00
P300,001.00 to P400,000.00	P900.00
P400,001.00 to P500,000.00	P1,000.00
P500,001.00 to P750,000.00	P1,500.00
P750,001.00 to P1,000,000.00	P2,000.00
P1,000,001.00 or higher	P3,000.00

K. All other provisions of Republic Act No. 8181 implementing the WTO Valuation Agreement are deemed integral part of this Order.

cordance with Method 5.

2. In determining the Transaction Value, the following adjustments shall be added to the price actually paid or payable for the imported goods being valued if such value has not been included in the price actually paid or payable;

- (a) Commissions and brokerage fees (except buying commissions),
- (b) Cost of Containers which are treated as being one for Customs purposes with the goods in question;
- (c) Cost of packing whether for labor or materials;
- (d) Assists;  
Assist is defined as the value, apportioned as appropriate, of certain goods and services supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been incorporated in the price actually paid or payable. They include:
  - Materials, components, parts and similar items incorporated in the imported goods;
  - Tools, dies, moulds and similar items used in the production of the imported goods;
  - Materials consumed in the production of the imported goods; and
  - Engineering, development, artwork, design work, and plans undertaken elsewhere than in Philippines and necessary for the production of the imported goods.
- (e) Royalties and license fees related to the goods being valued;
- (f) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- (g) The cost of transport of the imported goods to the port of entry in the Philippines;
- (h) Loading, unloading and handling charges associated with the transport of the imported goods from the country of exportation to the port of entry in the Philippines; and
- (i) The cost of insurance

3. The dutiable value must not include the following charges or costs, if they are distinguished from the price actually paid or payable for the goods:

- (a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) Cost of transport after importation;

#### D. Method 4: The Deductive Value

By this method, the dutiable value is determined on the basis of sales in the Philippines of the goods being valued or of identical or similar imported goods, less certain specified expenses resulting from the importation and sale of the goods.

1. The sales in the Philippines must meet the following conditions:

- (a) The imported goods or identical or similar imported goods have been sold in the Philippines in the same condition as imported;
- (b) Sales of the goods being valued or of identical or similar goods have taken place at or about the time of importation of the goods being valued;
- (c) If no sales took place at or about the time of importation, it is permitted to use sales of the imported goods or identical or similar imported goods, sold in the Philippines in the same condition as imported, at the earliest date after importation but before the expiration of 90 days after such importation;
- (d) If there are no sales of identical or similar imported goods in the condition as imported that meet all the above requirements, the importer may choose to use sales of the goods being valued after further processing;
- (e) The purchaser must not be related to the importer from whom he buys such goods;
- (f) The purchaser in the Philippines must not have supplied assists, either directly or indirectly;

The expression "at or about the same time", when applied to the deductive method, shall mean a period extending 45 days prior to and 45 days following the importation of the goods being valued.

2. A deductive value is determined by making a deduction from the established price per unit for the aggregate of the following elements:

- (a) Commissions generally earned on a unit basis in connection with sales in the Philippines for goods of the same class or kind;

-OR-

- (b) Additions usually made for in connection with sales profit and general expenses in the Philippines for goods of the same class or kind;

-AND-

- (c) The usual transport, insurance and associated costs incurred within the Philippines; and
- (d) Customs duties and other national taxes payable in the Philippines by reason of the importation or sale of the goods.

K. All other provisions of Republic Act No. 8181 implementing the WTO Valuation Agreement are deemed integral part of this Order.

#### IV. CONFIDENTIALITY CLAUSE

All information which is by nature confidential or which is provided on a confidential basis for the purposes of Customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the persons or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

#### V. AUTHORITY OF THE COMMISSIONER TO PROMULGATE ADDITIONAL IMPLEMENTING RULES AND REGULATIONS

The Commissioner of Customs may promulgate additional implementing rules and regulation on the determination of Customs dutiable value pursuant to this Order, Republic Act No. 8181 and the WTO Valuation Agreement.

#### VI. REPEALING CLAUSE

All Orders, Memorandums, Circulars or parts thereof which are inconsistent with this Order are hereby deemed repealed and/or modified accordingly.

#### VII. SEPARABILITY CLAUSE


If any part of this Order is declared by the Courts as unconstitutional or contrary to existing laws, the other parts not declared shall remain in full force and effect.

#### VIII. EFFECTIVITY

This order shall take effect on January 1, 2000.

  
NELSON A. TAN  
Commissioner

APPROVED:

  
EDGARDO B. ESPIRITU  
Secretary of Finance

Date of Approval:  
12/16/99