

**[ REPUBLIC ACT NO. 9135, April 27, 2001 ]**

**AN ACT AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1464, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED, AND FOR OTHER PURPOSES**

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

SECTION 1. Section 201 of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

"SEC. 201. *Basis of Dutiable Value.* —

A. *Method One. - Transaction Value.* — The dutiable value of an imported article subject to an *ad valorem* rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted by adding:

1. The following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:

- a. Commissions and brokerage fees (except buying commissions);
- b. Cost of containers;
- c. The cost packing, whether for labour or materials;
- d. The value, apportioned as appropriate, of the following goods and services: materials, components, parts and similar items incorporated in the imported goods; tools; dies; moulds and similar items used in the production of imported goods; materials consumed in the production of the imported goods; and engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of imported goods, where such goods and services are 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;
- e. The amount of royalties and license fees related to the goods being valued that the buyer must pay, either

directly or indirectly, as a condition of sale of the goods to the buyer;

2. 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;
3. The cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines;
4. 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
5. The cost of insurance.

All additions to the price actually paid or payable shall be made only on the basis of objective and quantifiable data.

No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Section: *Provided*, That Method One shall not be used in determining the dutiable value of imported goods if:

- a. There are 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.
- b. The sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- c. 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 hereof; or
- d. The buyer and the seller are related to one another, and such relationship influenced the price of the goods. Such persons shall be deemed related if:
  - i. They are officers or directors of one another's businesses;
  - ii. They are legally recognized partners in business;
  - iii. There exists an employer-employee relationship between them;
  - iv. Any person directly or indirectly owns, controls or holds five percent (5%) or more of the outstanding voting stock or shares of both seller and buyer;
  - v. One of them directly or indirectly controls the other;

- vi. Both of them are directly or indirectly controlled by a third person;
- vii. Together they directly or indirectly control a third person; or
- viii. They are members of the same family, including those related by affinity or consanguinity up to the fourth civil degree.

Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Act if they fall within any of the eight (8) cases above.

- B. *Method Two. - Transaction Value of Identical Goods.* — Where the dutiable value cannot be determined under method one, 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. "Identical goods" shall mean goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical.
- C. *Method Three. - Transaction Value of Similar Goods.* — Where the dutiable value cannot be determined under the preceding method, 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. "Similar goods" shall mean goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark shall be among the factors to be considered in determining whether goods are similar.

If the dutiable value still cannot be determined through the successive application of the two immediately preceding methods, the dutiable value shall be determined under method four or, when the dutiable value still cannot be determined under that method, under method five, except that, at the request of the importer, the order of application of methods four and five shall be reversed: Provided, however, That if the Commissioner of Customs deems that he will experience real difficulties in determining the dutiable value using method five, the Commissioner of Customs may refuse such a request in which event the dutiable value shall be determined under method four, if it can be so determined.

- D. *Method Four. - Deductive Value.* — The dutiable value of the imported goods under this method shall be the deductive value which shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Philippines, in the same condition as when imported, in the greatest aggregate

quantity, at or about the time of the importation of the goods being valued, to persons not related to the persons from whom they buy such goods, subject to deductions for the following:

1. Either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;
2. The usual costs of transport and insurance and associated costs incurred within the Philippines; and
3. Where appropriate, the costs and charges referred to in subsection (A) (3), (4) and (5); and
4. The customs duties and other national taxes payable in the Philippines by reason of the importation or sale of the goods.

If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued in the Philippines in the conditions as imported, the customs value shall, subject to the conditions set forth in the preceding paragraph hereof, be based on the unit price at which the imported goods or identical or similar imported goods sold in the Philippines in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety (90) days after such importation.

If neither the imported goods nor identical nor similar imported goods are sold in the Philippines in the condition as imported, then, if the importer so requests, the dutiable value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Philippines who are not related to the persons from whom they buy such goods, subject to allowance for the value added by such processing and deductions provided under Subsections (D)(1), (2), (3) and (4) hereof.

E. *Method Five. - Computed Value.* — The dutiable value under this method shall be the computed value which shall be the sum of:

1. The cost or value of materials and fabrication or other processing employed in producing the imported goods;
2. The amount for profit and general expenses equal to that usually reflected in the sale of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Philippines;
3. The freight, insurance fees and other transportation expenses for the importation of the goods;
4. Any assist, if its value is not included under paragraph (1) hereof; and
5. The cost of containers and packing, if their values are not included under paragraph (1) hereof.

The Bureau of Customs shall not require or compel any person not

residing in the Philippines to produce for examination, or to allow access to, any account or other record for the purpose of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value may be verified in another country with the agreement of the producer and provided they will give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

F. *Method Six. - Fallback Value.* — If the dutiable value cannot be determined under the preceding methods described above, it shall be determined by using other reasonable means and on the basis of data available in the Philippines.

If the importer so requests, the importer shall be informed in writing of the dutiable value determined under Method Six and the method used to determine such value.

No dutiable value shall be determined under Method Six on the basis of:

1. The selling price in the Philippines of goods produced in the Philippines;
2. A system that provides for the acceptance for customs purposes of the higher of two alternative values;
3. The price of goods in the domestic market of the country of exportation;
4. The cost of production, other than computed values, that have been determined for identical or similar goods in accordance with Method Five hereof;
5. The price of goods for export to a country other than the Philippines;
6. Minimum customs values; or
7. Arbitrary or fictitious values.

If in the course of determining the dutiable value of imported goods, it becomes necessary to delay the final determination of such dutiable value, the importer shall nevertheless be able to secure the release of the imported goods upon the filing of a sufficient guarantee in the form of a surety bond, a deposit, cash or some other appropriate instrument in an amount equivalent to the imposable duties and taxes on the imported goods in question conditioned upon the payment of customs duties and taxes for which the imported goods may be liable: *Provided, however,* That goods, the importation of which is prohibited by law shall not be released under any circumstance whatsoever.

Nothing in this Section shall be construed as restricting or calling into question the right of the Collector of Customs to satisfy himself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes. When a declaration has been presented and where the customs