

[BOC CUSTOMS ADMINISTRATIVE ORDER NO. 2-99, December 16, 1999]

**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 herein.

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 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;

Assists 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;
- (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.