

Committee on Customs Valuation

**INFORMATION ON IMPLEMENTATION AND ADMINISTRATION
OF THE AGREEMENT ON CUSTOMS VALUATION**

Checklist of issues

PHILIPPINES

The following communication, dated 13 August 2004 is being circulated at the request of the delegation of the Philippines

1. Questions concerning Article 1:

(a) Sales between related persons:

(i) *Are sales between related persons subject to special provisions?*

No.

(ii) *Is the fact of intercompany prices prima facie considered as grounds for regarding the respective prices as being influenced?*

No.

(iii) *What is the provision for giving the communication of the above-mentioned grounds in writing if the importer so requests (Article 1.2(a))?*

Please refer to the last paragraph of Section 1 of the Republic Act (RA) 9135 and the second paragraph of Section 1 (F) of RA 9135.¹

(iv) *How has Article 1.2(b) been implemented?*

Please refer to the last paragraph of Customs Administrative Order (CAO) 2-99 Section II A.1 (e).²

¹ See G/VAL/N/1/PHL/1, notification by the Philippines under Article 22.1 and 22.2 of the Agreement.

² A copy of all the cited Customs Administrative Orders (CAO) and Customs Memorandum Orders (CMO) are available with the Secretariat for consultation.

- (b) Price of lost or damaged goods:

Are there any special provisions or practical arrangements concerning the valuation of lost or damaged goods?

None.

2. How has the provision of Article 4 to allow the importer an option to reverse the order of application of Articles 5 and 6 been implemented?

Please refer to the second paragraph of Section 1 (C) of RA 9135 and the first paragraph of CAO 2-99 Section II.

3. How has Article 5.2 been implemented?

Please refer to the last paragraph of Section 1 (D) of RA 9135 and CAO 2-99 Section 2 (D) 1 (d).

4. How has Article 6.2 been implemented?

Please refer to the last paragraph of Section 1 (E) of RA 9135.

5. Questions concerning Article 7:

- (a) What provisions have been made for making value determinations to Article 7?

The provisions are included in the first paragraph of Section 1 (F) of RA 9135 and Section II (F) of CAO 2-99.

- (b) What is the provision for informing the importer of the customs value determined under Article 7?

Please refer to the second paragraph of Section 1 (F) of RA 9135.

- (c) Are the prohibitions found in Article 7.2 delineated?

Yes. Please refer to the third paragraph of Section 1 (F) of RA 9135.

6. How have the options found in Article 8.2 been handled? In the case of f.o.b. application, are ex-factory prices accepted?

Please refer to Section 1 (A) of RA 9135 and Section II (A)-2 of CAO 2-99. In the case of f.o.b. application, ex-factory prices are not applicable as valuation is based on c.i.f.

7. Where is the rate of exchange published, as required by Article 9.1?

The Bangko Sentral ng Pilipinas (BSP) issues the official exchange rate which are published in major newspapers or in BSP's website.

8. What steps have been taken to ensure confidentiality, as required by Article 10?

Confidentiality is ensured through the provisions of Section 1 (i) of RA 9135 and the provisions in Section IV of CAO 2-99 and Section VI.D of CAO 5-2001.²

9. Questions concerning Article 11:

- (a) What rights of appeal are open to the importer or any other person?

The right of appeal to the importer and other persons is provided for in Customs Memorandum Order (CMO) 37-2001.² Additionally, the importer may within fifteen (15) days from receipt of the adverse decision, appeal the same to the Commissioner of Customs. The appeal may be given due course subject to the condition that the importer will undergo a voluntary post audit as provided for in Section IV C of CAO 5-2001.

- (b) How is he to be informed of his rights to further appeal?

Information on the right to further appeal is provided in CMO 27-99, Section III.15

10. Provide information on the publication, as required by Article 12, of:

- (a) (i) *The relevant national laws:*

This is contained in the Tariff and Customs Code published in 1998 as amended by RA 9135 which reflects the WTO Valuation Agreement. CAO 5-2001 and CMO 37-2001 were promulgated to implement RA 9135.

- (ii) *The regulations concerning the application of the Agreement:*

CAO 2-99 on Rules and Regulations Implementing Section 1 of R.A 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.

CMO 3-2000 on Enhanced Cargo Clearance Procedures with Provisions on Tentative Release and CMO-10-2000 on Detailed Procedures to Further Implement CMO-3-2000.

CMO 27-99 on Procedures in Protest Cases on the Determination of the Customs Value of Imported Goods under the WTO Valuation Regime

- (iii) *The judicial decision and administrative rulings of general application relating to the Agreement:*

There is no jurisprudence as of yet relating to the agreement.

- (iv) *general or specific laws being referred to in the rules of implementation or application:*

The Tariff and Customs Code as amended by RA 9135 is the general law referred to.

- (b) Is the publication of further rules anticipated? Which topics would they cover?

Yes It may cover provisions on compliance or post-entry audit, supervision and control over judicial proceedings, and disclosure of confidential information as a statutory offense of officials and employees.

11. Questions concerning Article 13:

- (a) How is the obligation of Article 13 (last sentence) being dealt with in the respective legislation?

This is dealt with in the fourth paragraph of Section 1 (F) of RA 9135 and Section III.C of CAO 5-2001.

- (b) Have additional explanations been laid down?

Yes, please refer to CMO 27-99.

12. Questions concerning Article 16:

- (a) Does the respective national legislation contain a provision requiring customs authorities to give an explanation in writing as to how the customs value was determined?

Yes. Please refer to the 2nd to the last paragraph and last paragraph of Section I of RA 9135, Section 11.2 and 11.5 of CMO3-2000.

- (b) Are there any further regulations concerning an above-mentioned request?

None.

13. How have the Interpretative Notes of the Agreement been included?

These have been expressly included through specific provisions in Republic Act 9135 and relevant CAOs or CMOs.

14. How have the provisions of the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods been implemented?

There are no special provisions on the treatment of interest charges.

15. For those countries applying paragraph 2 of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, how have the provisions of this paragraph been implemented?

There are no special provisions on this topic.
