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Committee on Customs Valuation

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

CHECK-LIST OF ISSUES

PHILIPPINES

The following communication, dated 26 May 2023, 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?

Yes, importers are required to submit a Supplemental Declaration on Valuation (SDV) for sales between related persons to determine whether the value closely approximates the transaction value in sales to unrelated buyers or the customs value of identical or similar goods under Sections 704 and 705 of the Customs Modernization and Tariff Act (CMTA).

CLARIFICATORY NOTE: The CMTA repealed Republic Act (RA) No. 9135 which amended the Tariff and Customs Code of the Philippines (Presidential Decree No. 1464). RA No. 9135 incorporated the rules on Customs Valuation under the terms of the General Agreement on Tariffs and Trade (GATT) Agreement 1994.

(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 afore-mentioned grounds in writing if the importer so requests? (Article 1.2(a))

Please refer to the last paragraph of Section 707 of the Republic Act No. 10863 and the first paragraph of Section 706 of R.A. No. 10863.

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

Please refer to the last paragraph of Section 701 of the CMTA.

(b) Price of lost or damaged goods:

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

Yes, please refer to Sections 904 to 911 of the CMTA.

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

Please refer to the third paragraph of Section 700 and first paragraph of Section 704 of R.A. No. 10863 and the third paragraph of Section 4.9.1. of CAO No. 9-2020.

3. How has Article 5.2 been implemented?

Please refer to the last paragraph of Section 704 of R.A. No. 10863 and the last paragraph of Section 4.9.5 of CAO No. 09-2020.

4. How has Article 6.2 been implemented?

Please refer to the last paragraph of Section 705 of R.A. No. 10863.

5. Questions concerning Article 7:

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

The provisions are included in the first paragraph Section 706 of R.A. No. 10863 and Section 4.9.7 of CAO No. 9-2020.

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

Please refer to the first paragraph Section 706 of R.A. No. 10863 and Section 4.9.7 of CAO No. 9-2020.

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

Yes. Please refer to the second paragraph Section 706 of R.A. No. 10863 and Section 4.9.7 of CAO No. 9-2020.

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

Please refer to Section 701 of R.A. No. 10863 and Section 4.9.2 of CAO No. 9-2020. In the case of FOB application, ex-factory prices are not applicable since the cost of goods already covers the transportation from the factory to the port of loading. For purposes of computing duties and taxes in the Philippines, CIF is applied.

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. Also, all published rates are circulated by the BOC through Customs Memorandum Circular on a weekly basis.

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

Confidentiality is ensured through the provisions in Sections 111 and 112 of the CMTA and Sections 6 and 8.12 of CMO No. 53-2019 – Freedom of Information Manual.

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 Sections 114 and 1106 of R.A. No. 10863 (CMTA); Sections 14, 16 and 17 of CAO No. 10-2020 – Seizure and Forfeiture Proceedings and Appeals Process; and Section 6.4 to 6.6 of CAO No. 2-2020.

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

Information on the right to further appeal is provided in Section 113 of R.A. No. 10863 (CMTA), CAO No. 10-2020 and Sections 6.2.1 to 6.2.2 of CAO No. 2-2020.

10. Provide information on the publication, as required by Article 12, of:**(a)****(i) The relevant national laws;**

This is contained in the "Customs Modernization and Tariff Act (CMTA)" or R.A. No. 10863, that reflects WTO Valuation Agreement. Nonetheless, all CAOs are published in newspapers of general circulation or on the official gazette.

CAO No. 9-2020 on Clearance Procedures for Goods Entered for Consumption under the Formal Entry Process

(ii) The regulations concerning the application of the Agreement;

CAO No. 2-99 on Rules and Regulations Implementing Section 1 of RA 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, and repealed by R.A. No. 10863, on the Determination of Customs Dutiable Value.

CMO No. 3-2000 on Enhance Cargo Clearance Procedures with Provisions on Tentative Release and CMO No. 10-2000 on Detailed Procedures to Further Implement CMO No. 3-2000.

CMO No. 27-99 and CAO No. 2-2020 on Procedures in Protest Cases on the Determination of the Customs Value of Imported Goods under the WTO Valuation Regime.

CAO No. 9-2020 on Clearance Procedures for Goods Entered for Consumption under the Formal Entry Process

CAO No. 2-2020 on Dispute Settlement and Protest

CAO No. 10-2020 on Seizure and Forfeiture Proceedings and Appeals Process

(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 Customs Modernization and Tariff Act (CMTA) or R.A. No. 10863 is the general law referred to.

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

Rules on importation and cross-border movement of e-commerce goods.

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 under Sections 403, 425, 426, 707 and 1106 of R.A. No. 10863; CAO No. 9-2020; and CAO No. 2-2020.

(b) Have additional explanations been laid down?

Yes, please refer to CAO No. 9-2020; and CAO No. 2-2020.

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 first and last paragraph of Section 707 of R.A. No. 10863, Section 4.10 of CAO No. 9-2020.

(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 R.A. No. 10863 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?

The Philippines does not treat interest charges as part of the customs value of imported goods because there is no existing law or domestic regulation that requires the inclusion of such charges. However, for purposes of imposing penalty, interest charges are collected pursuant to Section 104 of the CMTA and surcharges are collected under Section 1425 of the CMTA.

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?

Under the current practice, only the cost of the medium is subject to taxes and duties, unless exempted if the value is considered de minimis pursuant to Section 423 of the CMTA. The cost of the software or data is not considered in the computation of the transaction value.
