

WORLD TRADE ORGANIZATION

G/VAL/N/1/PHL/1
5 October 2001

(01-4820)

Committee on Customs Valuation

Original: English

NOTIFICATION UNDER ARTICLE 22 OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

PHILIPPINES

The following communication, dated 12 September 2001, has been received from the Permanent Mission of Philippines.

Pursuant to Article 22 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, I have the honour to notify the Philippines' enactment of Republic Act No. 9135¹, entitled in part as "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", which provides, among others, for the use of the transaction value as basis of dutiable value of imported articles subject to an *ad valorem* rate of duty.

¹ In English only.

H. No. 8623
S. No. 2196

Republic of the Philippines
Congress of the Philippines
Metro Manila
Eleventh Congress
Third Regular Session



Begun and held in Metro Manila, on Monday, the twenty-fourth day
of July, two thousand.

[REPUBLIC ACT NO. 9135]

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