



Republic of the Philippines
Department of Finance
Bureau of Customs
1099 Manila

CUSTOMS ADMINISTRATIVE ORDER

No. 4-2006

Subject: **AMENDMENT OF CHAPTER V, PAR. C. 1(a) OF
CUSTOMS ADMINISTRATIVE ORDER NO. 6-94**

Pursuant to Republic Act No. 7227, Proclamation No. 163, Executive Order Nos. 80 and 97 and Presidential Decree No. 66 in relation to Section 608 of the Tariff and Customs Code of the Philippines and pertinent provisions of the Revised Administrative Code of 1987, par. C.1(a) of Chapter V of CAO 6-94 is hereby amended to read as follows:

1. ASSESSMENT OF DUTIES AND TAXES

a. Tariff Classification

The classification of foreign articles at the time of its transfer from the Main Zone/Secured Area to the Customs Territory shall be the raw materials/input used in the manufacture or production of the finished goods for domestic sale, whether or not they have been manufactured, blended or otherwise combined with domestic articles."

All orders, rules and regulation inconsistent herewith are hereby repealed, modified or amended accordingly.

This order shall take effect fifteen (15) days after its approval and publication on the Official Gazette or in two (2) newspaper of general circulation with a copy thereof to be given to the U.P. Law Library for record purposes.

NAPOLEON J. MORALES
Acting Commissioner

Approved:

MARGARITO B. TEVES
Secretary of Finance

092008
Date of Approval: 15 March 2006





Republic of the Philippines
DEPARTMENT OF FINANCE
 Roxas Boulevard Corner Vito Cruz Street
 Manila 1004



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OFFICE OF THE SECRETARY
 BUREAU OF CUSTOMS
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2nd Indorsement
 16 February 2006

Respectfully returned to the Commissioner of Customs, Manila, the herein letter-request of **YOKOHAMA TIRE PHILIPPINES, INC. (YTPI)** for the amendment of Customs Administrative Order (CAO) 6-94, particularly Chapter V, Par. C1(a) thereof.

Conformably with the recommendation of that bureau in the light of the opinion of its Legal Service that "the tax treatment of manufactured goods/products transferred by the Ecozone locators to Customs territory for domestic sale shall be subject to payment of corresponding taxes on raw materials, which is consistent with the position taken by CDC, PEZA and DTI/BOI", this Office interposes no objection to the proposed amendment.

By authority of the Secretary:

GAUDENCIO A. MENDOZA, JR.
 Undersecretary
 Legal & Revenue Operations Group

BUREAU OF CUSTOMS
 Office of the Commissioner
 Inspiring Excellence
 05-02304

BUREAU OF CUSTOMS
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"Nulong-tulong sa pagsulong!"



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS
MANILA 1099

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REVENUE OPERATION GROUP

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1st Indorsement
7 October 2005

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CENTRAL RECORDS MGMT. DIV.
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Respectfully forwarded to the Honorable Secretary, Department of Finance, the herein letter-request of YOKOHAMA TIRE PHILIPPINES, INC. (YIPI) for the amendment of Customs Administrative Order (CAO) No. 6-94, particularly Chapter V., Par C.1 (a) thereof, together with the proposal amendatory CAO, recommending approval thereof, in the light of the Legal Opinion No. 003-05 dated October 7, 2005 issued by the Legal Service, this Bureau, that "the tax treatment of manufactured goods/products transferred by the Ecozone locators to Customs territory for domestic sale shall be subject to payment of corresponding taxes on raw materials, which is consistent with the position taken by CDC, PEZA and DTI/BOI", which is **NOTED** with approval.

Alexandre M. Arevalo

ALEXANDER M. AREVALO
Deputy Commissioner, MISTG &
Officer-in-Charge



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LEGAL SERVICE

CAO-4-06

LEGAL OPINION NO. 0003-05
October 5, 2005

Whether or not articles transferred by locators of the Clark Special Economic Zones (CSEZ) to the Customs Territory should be assessed duties and taxes based on raw materials?

The foregoing legal question is raised in the light of the request of Yokohama Tire Philippines, Inc. (YTPI), a duly registered CSEZ enterprise, for the amendment of Customs Administrative Order (CAO) No. 6-94, specifically item C.1a of Chapter V thereof, which provides:

1. Assessment of Duties and Taxes
- a. Tariff Classification

The classification under the Tariff and Customs Code of the Philippines of foreign articles, whether or not they have been manufactured, blended or otherwise combined with domestic articles, shall be determined according to the time of its transfer from the Main Zone/secured area to the Customs Territory."

YTPI is engaged in the production, manufacture, importation, exportation and wholesale sale of various kinds of tires. In the manufacture thereof, it uses both raw material components imported into CSEZ tax and duty free as well as domestic article components. YTPI principally exports its finished tires, pursuant to the terms and condition of YTPI's registration as a CSEZ registered enterprise and with the Clark Development Corporation's (CDC) approval, but sells a portion of its finished tires domestically, subject to payment of customs duties and taxes, based on the C.1a, Sec. V of CAO 6-94. As such, the tariff classification rate of finished tires is applied to YTPI for goods transferred from the CSEZ to the customs territory for domestic sale.

YTPI submits that the customs duties on the sale of its finished tires to the Customs Territory should be based on the classification and value of the imported foreign articles/raw materials used to manufacture the tires. It is also YTPI's position that the proper interpretation of CAO 6-94 is to apply the rate corresponding to the raw materials at the time the foreign materials, whether or not it has been manufactured, blended or otherwise combined with domestic articles, is transferred to the Customs Territory.

The Clark Development Corporation (CDC), Philippine Economic Zone Authority (PEZA) and the Department of Trade and Industry (DTI) Undersecretary and Board of Investment Vice-Chairman and Managing Head Gregory L. Domingo support the position of YTPI because this will provide consistency of treatment for sale to the domestic market among all export enterprises registered with BOI or with export processing zone; this will harmonize the treatment of goods sold by ecozone locators and BOI-registered export producers operating customs bonded manufacturing warehouse in line with the principle of the government to promote a level playing field for the business sector; this will attract quality investments through transparent and investor-friendly policies; and finally, the resolution of this issue in favor of the investors will send a strong signal that the Philippines deserves to be an investment destination.

Incidentally, this Bureau issued CAO 1-2003 covering the domestic sale of participants in the Motor Vehicle Development Program (MVDP) located in the economic zones, which provides:

"CBUs, assembled from imported CKDs by participants of the Motor Vehicle Development Program located inside the econozones/PEZA, shall upon withdrawal for local consumption be assessed the corresponding CKD tariff rates and not the tariff rates for CBUs."

At this juncture, it becomes imperative to review the legal basis for YIPI's tax regime.

Being a CSEZ locator, the law in point is RA 7227 entitled "An Act Accelerating the Conversion of Military Reservations into other Productive Uses, Creating the Bases Conversion and Development Authority for this, Providing Funds therefor and for other purposes," pertinent provision of which is hereunder quoted:

"Sec. 15. Clark and Other Special Economic Zones - Subject to the concurrence by resolution of the local government units directly affected, the president is hereby authorized to create by executive proclamation, a Special Economic Zone covering the lands occupied by the Clark military reservation and its continuous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, located within the territorial jurisdiction of Angeles City, Municipalities of Mabalacat and Porac, Province of Pampanga, and the Municipality of Capas, Province of Tarlac, in accordance with the provision as herein provided insofar as applied to the Clark military reservations.

The governing body of the Clark Special Economic Zone shall likewise be established by executive proclamation with such powers and functions exercised by the Export Processing Zone Authority pursuant to Presidential Decree No. 66, as amended."

Under PD 66 entitled "Creating the Export Processing Zone Authority and Revising Republic Act No. 5490", which was enacted on 20 November 1972, the tax treatment of merchandise in the zone is governed by Sec. 17 thereof, the pertinent provision of which provides:

"Sec. 17. Tax Treatment of Merchandise in the Zone

xxx

- (4) Merchandise sent from the zone to the customs territory shall, whether or not combined with or made part of other articles while in the zone, be subject to laws and regulations governing imported merchandise. The duties and taxes shall be assessed on the value of imported materials (except when the final product is exempt), and the internal revenue taxes on the value added.

xxx

- (7) Articles produced or manufactured in the zone and exported therefrom shall, on subsequent importations into the customs territory, be subject to the import laws applicable to like articles manufactured in a foreign country.

xxx"

Subsequently, CAO 6-94 was issued pursuant to RA 7227 and PD 66, requiring among others, that "the classification under the Tariff and Customs Code of the Philippines of foreign articles, whether or not they have been manufactured, blended or otherwise combined with domestic articles, shall be determined according to the time of its transfer from the Main Zone/secured area to the Customs Territory".

However, Republic Act 7916 entitled "An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administrative, and

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Coordination of Special Economic Zones in the Philippines, creating for this purpose, the Philippine Economic Zone Authority (PEZA), and for other purposes" was enacted in 1995, the pertinent provisions thereof state:

"Sec. 26. Domestic Sales - Goods manufactured by an ECOZONE enterprise shall be made available for immediate retail sales in the domestic market, subject to payment of corresponding taxes on the raw materials and other regulations that may be adopted by the Board of the PEZA. xxx"

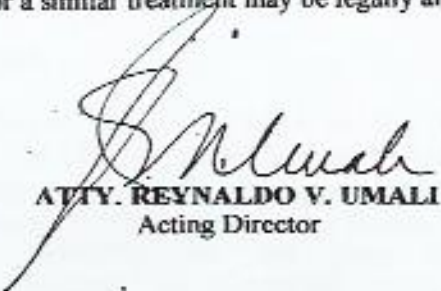
and

Sec. 54. Repealing Clause. - All laws, acts, presidential decrees, executive orders, proclamations and/or administrative regulations which are inconsistent with the provisions of this Act, are hereby amended, modified, superseded or repealed accordingly."

It is, thus, apparent that starting 1995, the tax treatment of manufactured goods/products transferred by the Ecozone locators to customs territory for domestic sale shall be subject to payment of corresponding taxes on raw materials, which is consistent with the position taken by CDC, PEZA and DTI/BOI.

Accordingly, the request of YUPI for a similar treatment may be legally allowed.

Respectfully submitted.


ATTY. REYNALDO V. UMALI
Acting Director