



REPUBLIC OF THE PHILIPPINES
Department of Finance
BUREAU OF CUSTOMS
MANILA 1099

APR 19 2010

Date

CUSTOMS MEMORANDUM ORDER

NO. 16-2010

Subject: Rules and Regulations to Implement Customs Administrative Order (CAO) No. 4-2004, more particularly on Dutiable Value

1.0 OBJECTIVES

- 1.1 To effectively implement CAO 4-2004 including its objectives by incorporating in the customs regulations the principles, explanatory notes, and such other texts, relevant to the dutiable value under the **WORLD Trade Organization VALUATION AGREEMENT (WVA, for brevity)**;
- 1.2 To ensure that duties and taxes are properly collected;
- 1.3 To make the customs rules and regulations compliant with the WVA;
- 1.4 To guide concerned parties on the correct application of the principles and standards in the determination of dutiable value under CAO 4-2004; and
- 1.5 To promote trade facilitation through the adoption of the principles and standards of customs valuation under the WVA.

2.0 PRINCIPLES AND STANDARDS IN THE DETERMINATION OF THE DUTIABLE VALUE

PRINCIPLES:

- 2.1 It is imperative that the rules for the application of the provisions of the WVA be elaborated in order to provide greater uniformity and certainty in its implementation;
- 2.2 There is a need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious dutiable values;
- 2.3 The basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;
- 2.4 The dutiable value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply; and
- 2.5 Valuation procedures should not be used to combat dumping.

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STANDARDS:

Sequential Application of Valuation Methods

- 2.6 The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is the Transaction Value and imported goods are to be valued in accordance with the provisions of this method whenever the conditions prescribed for its use are fulfilled.
- 2.7 Where the dutiable value cannot be determined under the Transaction Value method, it is to be determined by proceeding sequentially through the succeeding methods to the first such method under which the dutiable value can be determined. Except as provided under Section 3.1, paragraph 3 of this Order, it is only when the dutiable value cannot be determined under the provisions of a particular method that the provisions of the next method in the sequence can be used.


Use of Generally Accepted Accounting Principles (GAAP)

- 2.8 "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.
- 2.9 For purposes of this Order, the Bureau of Customs (BOC) shall utilize information prepared in a manner consistent with the generally accepted accounting principles in the country which is appropriate for the Valuation Method in question. For example, the determination of usual profit and general expenses under the provisions of Method Four would be carried out utilizing information prepared in a manner consistent with the generally accepted accounting principles of the country of importation which is the Philippines. On the other hand, the determination of usual profit and general expenses under the provisions of Method Five would be carried out utilizing information prepared in a manner consistent with the generally accepted accounting principles of the country of production. As a further example, the determination of the value of assist in the form of tools, dies, moulds, and similar items used in the production of the imported goods undertaken in the Philippines would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of the Philippines.

3.0 RULES ON CUSTOMS VALUATION

3.1 GENERAL PROVISIONS

The primary method in determining the dutiable value of imported goods shall be Method One: The Transaction Value, whenever the conditions prescribed for its use are fulfilled.

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However, if the dutiable value cannot be determined with the use of Method One, the following valuation methods shall be applied in sequential order:

Method Two: The Transaction Value of Identical Goods

Method Three: The Transaction Value of Similar Goods

Method Four: Deductive Value

Method Five: Computed Value

Method Six: Fallback Value

However, at the request of the importer, the order of application of Methods Four and Five may be reversed; provided, that the Commissioner of Customs agrees to such request taking into consideration that the reversal of the sequential order will not give rise to real difficulties for the BOC in determining the dutiable value under Method Five.

If the importer does not request that the order of Method Four and Method Five be reversed, the normal order of the sequence shall be followed. If the importer does so request but it then proves impossible to determine the dutiable value under the provisions of Method Five, the dutiable value shall be determined under the provisions of Method Four, if it can be so determined.

Where the dutiable value cannot be determined under the provisions of Methods One to Five, it shall be determined under the provisions of Method Six.


3.2 METHOD ONE: THE TRANSACTION VALUE

3.2.1 Price Actually Paid or Payable

3.2.1.1 The dutiable value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the Philippines adjusted in accordance with the provisions of Section 3.2.8 of this Order and subject to the conditions specified in Section 3.2.3 herein.

3.2.1.2 The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

The price actually paid or payable refers to the price for the imported goods. Thus, the flow of dividends or other payments from the buyer to the seller that do not relate to the imported

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goods are not part of the dutiable value.

3.2.2 Concept of Sale and Sale for Export

3.2.2.1 Sale

The transaction value of the imported goods is based on the price actually paid or payable for those goods when sold; therefore, there must be a sale for export to the Philippines as one of the conditions for the application of Method One.

The WVA itself provides no definition of a sale. It merely states that there must be a specific commercial operation that meets certain requirements and conditions. WCO Advisory Opinion 1.1 provides guidance in this matter by elaborating on the concept of "sale" as it appears in the WVA. It states that a sale may be described as follows:

- 3.2.2.1.1 A commercial operation which involves a buyer and a seller;
- 3.2.2.1.2 The buyer agrees to obtain certain goods;
- 3.2.2.1.3 An agreement to exchange the ownership of the goods at a time and for a price or other consideration;
- 3.2.2.1.4 A compensation occurs as the transfer for that ownership and acquisition for those goods; and
- 3.2.2.1.5 Both parties acknowledge that the transaction constitutes a commercial operation.

3.2.2.2 No Sale

Since one of the underlying principles of the WVA is to use the transaction value of the imported goods to the greatest extent possible, then the term "sale" should be taken in its widest sense.

Goods that might be considered not to be subject to a sale would include, among others, the following:

- 3.2.2.2.1 Free consignments, like, gifts, samples and promotional items;
- 3.2.2.2.2 Goods imported on consignments;
- 3.2.2.2.3 Goods imported by intermediaries, who do not purchase the goods and who sell them after importation;
- 3.2.2.2.4 Goods imported by branch offices which are not

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separate legal entities;

3.2.2.2.5 Goods imported under a hire or leasing contract; and

3.2.2.2.6 Goods supplied on loan, which remain the property of the sender.

3.2.2.3 Sale for Export

Only transactions involving an actual international transfer of goods may be used in valuing merchandise under the transaction value method.

3.2.2.4 "Sold for Export" in a Series of Sales

In a series of sales situation, the price actually paid or payable for the imported goods when sold for export to the Philippines is the price paid in the last sale occurring prior to the introduction of the goods into the Philippines, instead of the first (or earlier) sale.

3.2.3 Conditions under Method One

Method One shall be used if the following conditions are fulfilled:

3.2.3.1 There must be no restrictions as to the disposition or use of the goods by the buyer, other than restrictions which:

3.2.3.1.1 Are imposed or required by law or by Philippine authorities;

3.2.3.1.2 Limit the geographical area in which the goods may be resold; and


3.2.3.1.3 Do not substantially affect the value of the goods.

An example would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

3.2.3.2 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.

If the sale or price is subject to some conditions or considerations for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

3.2.3.2.1 The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities.

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3.2.3.2.2 The price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods.

3.2.3.2.3 The price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that the seller will receive a specified quantity of the finished goods.

Conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. Examples:

3.2.3.2.4 Buyer furnishes the seller with engineering and plans undertaken in the Philippines shall not result in rejection of the transaction value for the purposes of Method One.

3.2.3.2.5 Buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, and the value of those activities is not part of the dutiable value nor shall such activities result in rejection of the transaction value.

3.2.3.3 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 Section 3.2.8.

3.2.3.4 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:


3.2.3.4.1 They are officers or directors of one another's businesses;

3.2.3.4.2 They are legally recognized partners in business;

3.2.3.4.3 They are employer and employee;

3.2.3.4.4 Any person directly or indirectly owns, controls or holds five (5) per cent or more of the outstanding voting stock or shares of both of them;

3.2.3.4.5 One of them directly or indirectly controls the other;

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- 3.2.3.4.6 Both of them are directly or indirectly controlled by a third person;
- 3.2.3.4.7 Together they directly or indirectly control a third person; or
- 3.2.3.4.8 They are related by affinity or consanguinity up to the fourth civil degree.

For the purpose of Section 3.2.3.4, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

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 if they fall within the criteria of Section 3.2.3.4.

3.2.4 Acceptance of Method One in Related Sale

If the buyer and seller are related, the use of the transaction value method is acceptable if either of the two following circumstances is present:

- 3.2.4.1 The circumstances surrounding the transaction demonstrate that the relationship did not influence the price actually paid or payable. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the Collector of Customs has no doubts on the acceptability of the price, it should be accepted without requesting further information from the importer.

For example, the Collector of Customs may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

Where the Collector of Customs is unable to accept the transaction value without further inquiry, he should give the importer an opportunity to supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding the sale. In this context, the Collector of Customs should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Section 3.2.3.4 buy from and sell to each other as if they were not related,

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this would demonstrate that the price had not been influenced by the relationship.

As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship.

As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

3.2.4.2 The transaction value closely approximates to one of the following test values occurring at or about the same time:

3.2.4.2.1 The transaction value in sales to unrelated buyers of identical or similar goods for export to the Philippines; or

3.2.4.2.2 The deductive value of identical or similar goods determined in accordance with Method Four; or

3.2.4.2.3 The computed value of identical or similar goods determined in accordance with Method Five.


In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, adjustments and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

The tests set forth in Section 3.2.4.2 are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of Section 3.2.4.2 of this Order.

3.2.5 Collector of Customs' Action when there is Ground that Relationship has Influenced the Price

If, in the light of information provided by the importer or otherwise, the Collector of Customs has grounds for considering that the relationship influenced the price, he shall communicate the ground/s to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the ground/s shall be in writing.

If the importer contests the issue that the relationship influenced the price, the matter shall be raised and resolved through the existing dispute

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settlement mechanism, like, the Valuation and Classification Review Committee (VCRC).

3.2.6 Significance of Test Values

Test values provide an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the Collector of Customs and is therefore acceptable under the provisions of Method One.

Where a test under Section 3.2.4.2 is met, it is not necessary to examine the question of influence under Section 3.2.4.1. If the Collector of Customs has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in Section 3.2.4.2 has been met, there is no reason for him to require the importer to demonstrate that the test can be met. In Section 3.2.4.2.1 the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

3.2.7 Close Approximation of Values

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in Section 3.2.4.2 of Method One.


3.2.8 Adjustments

In determining the dutiable value under the provisions of Method One, the following adjustments shall be added to the price actually paid or payable for the imported goods being valued to the extent that they are incurred by the buyer, provided there is objective and quantifiable data to form the basis of the adjustment, and if such value has not been included in the price actually paid or payable:

3.2.8.1 Commissions and brokerage fees (except buying commissions);

Commissions and brokerage fees include selling commissions which are paid by the seller to his agent in the promotion and sale of his products. Selling commission may take the form of an indenter's commission, selling agent's commission, or manufacturer's representative commission.

The term brokerage fees refer to a commission paid to a

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broker who arranges the transaction between a seller and a buyer. Such may be paid by the seller or the buyer or by both the seller and the buyer. This normally applies to the commodities market. It does not refer to the customs broker's professional fees in customs clearance paid by the importer which is considered a post importation expense.

Buying commissions are fees paid by an importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued.

3.2.8.2 Cost of containers which are treated as being one for Customs purposes with the goods in question;

3.2.8.3 Cost of packing whether for labor or materials;

3.2.8.4 Assists;

"Assist" 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. The goods and services are:

3.2.8.4.1 Materials, components, parts and similar items incorporated in the imported goods;

3.2.8.4.2 Tools, dies, moulds and similar items used in the production of the imported goods;

3.2.8.4.3 Materials consumed in the production of the imported goods; and

3.2.8.4.4 Engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of the imported goods.

There are two factors involved in the apportionment of the elements, namely, the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with GAAP.

Concerning the value of the element, if the importer acquires the element from a seller not related to the importer at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to the importer, its value would be the cost of producing it. If the element had

been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

Finally, once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with the producer to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the Collector of Customs to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.


In order to minimize the burden for both the importer and Collector of Customs in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

Further, the manner in which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

Example: It is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the Philippines in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Section 3.2.8.

Another example is that - a firm may carry the cost of the

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design centre outside the Philippines as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Section 3.2.8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the Philippines.

- 3.2.8.5 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 being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

The royalties and licence fees may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in the Philippines shall not be added to the price actually paid or payable for the imported goods in determining the dutiable value.


Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the Philippines.

- 3.2.8.6 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;

An example of this element is that when the contract of sale between buyer and seller states that a certain percentage of the sales proceeds of an imported article is remitted to the seller.

- 3.2.8.7 The cost of transport of the imported goods to the port of entry in the Philippines; loading, unloading and handling charges associated with the transport of the imported goods to the port of entry in the Philippines; and

The cost of transportation would include those costs for physically moving the goods to the port of entry in the

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Philippines. This cost could include such charges as trucking (inland freight, rail freight, ocean freight, air freight and barge or lighterage and postal costs).

To illustrate further, there may be cases where the imported goods are transported by the importer's own vessel/aircraft. Although the cost of transportation has not been paid to a third party, to arrive at the dutiable value, the importer must, nevertheless, calculate the "actual cost" for that transportation of the goods to the country of importation. The example of such calculation would be a depreciation of the costs of the fuel, lubricants, parts, the vessel or aircraft itself and other related charges relating to the voyage/flight plus the salaries of the crew. This calculation should be based on the generally accepted accounting principles (GAAP).

Charges for loading, unloading and handling could be attributed to a number of different activities. Loading and unloading would include, in part, the movement of goods onto or from any conveyance. Handling would include any number of activities surrounding the physical movement of the goods such as preparation of manifests, B/L or AWB, obtaining any export license, and any other shipping arrangement. All these charges must be associated with the transportation of the goods before the vessel reaches the port of importation.

3.2.8.8 The cost of insurance.


For purposes of the determination of insurance as component of dutiable value reference is to be made to the provisions of CMO No. 22-2007 dated 6 September 2007.

The word insurance under this Section means those charges for insurance for the goods during transportation, loading, unloading and handling. WCO Advisory Opinion 13.1 states that the word "insurance" should be interpreted as referring solely to insurance costs incurred for the goods during the transport of the imported goods to the port or place of importation.

3.2.9 Post Importation Charges/Costs

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:

- 3.2.9.1 Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- 3.2.9.2 Cost of transport after importation; and

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3.2.9.3 Duties, taxes and other charges paid for the imported goods.

3.2.10 All additions to the price actually paid or payable shall be made only on the basis of objective and quantifiable data.

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Section 3.2.8, the transaction value cannot be determined under the provisions of Method One. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

3.2.11 No additions shall be made to the price actually paid or payable in determining the dutiable value except as provided in Section 3.2.8.

3.3 METHOD TWO: THE TRANSACTION VALUE OF IDENTICAL GOODS

3.3.1 If the dutiable value of imported goods cannot be determined with the use of Method One, the dutiable value shall be determined under Method Two or 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.

In applying this Method, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the dutiable value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

3.3.2 "Exported at or about the same time" is generally to be interpreted as exportation of the identical goods forty five (45) days before or after the date of bill of lading or airway bill of lading of the goods being valued. This external time standard must allow for practical application of the Method in question. Hence, the words "or about" should be regarded as intended simply to make the terms "at the same time" somewhat less rigid. In addition, it should be noted that according to Section 2, paragraph 2.4, the

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3.3.5.2. A sale at a different commercial level but in substantially the same quantities; or

3.3.5.3 A sale at a different commercial level and in different quantities.

Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

3.3.5.4 Quantity factors only;

3.3.5.5 Commercial level factors only; or

3.3.5.6 Both commercial level and quantity factors.

The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.


A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a dutiable value under the provisions of Method Two is not appropriate.

3.3.6 If in applying Method Two, more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the dutiable value of the imported goods.

3.4 METHOD THREE: THE TRANSACTION VALUE OF SIMILAR GOODS

3.4.1 If the dutiable value of imported goods cannot be determined under the preceding methods, 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.

In applying this Method, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the dutiable value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of

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differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

3.4.2 "Exported at or about the same time" is generally to be interpreted as exportation of the similar goods forty five (45) days before or after the date of bill of lading or airway bill of lading of the goods being valued. This external time standard must allow for practical application of the Method in question. Hence, the words "or about" should be regarded as intended simply to make the terms "at the same time" somewhat less rigid. In addition, it should be noted that according to Section 2, paragraph 2.4, the dutiable value should be based on simple and equitable criteria consistent with commercial practice. Starting from these principles "at or about the same time" should be taken to cover a period of time, as close to the date of exportation as possible, within which commercial practices and market conditions which affect price remain the same. In the final analysis, the question must be decided on a case by case basis within the overall context of the application of Method Three.

3.4.3 Similar goods are defined as goods which, although not alike in all respects -

3.4.3.1 Have like characteristics and like component materials;

3.4.3.2 Are capable of performing the same functions as the goods being valued;

3.4.3.3 Are commercially interchangeable with the goods being valued;

3.4.3.4 Are produced in the same country of the goods being valued; and


3.4.3.5 Are produced by the producer of the goods being valued.

The definition of similar 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.

Where there are no similar goods produced by the same person in the country of production of the goods being valued, similar goods produced by a different person in the same country may be taken into account.

3.4.4 Where no sale of similar goods at the same commercial level and substantially the same quantity as the goods being valued is found, similar goods at different commercial level and/or in different quantity may be utilized. Such transaction value of similar goods shall be adjusted upwards or downwards to account for demonstrated differences between the goods being valued and the similar goods, to take account of:

3.4.4.1 Commercial level differences;

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- 3.4.4.2 Quantity differences; and
- 3.4.4.3 Significant differences for transportation costs due to variances in the mode and/or distance of transport.
- 3.4.5 In applying Method Three, the Collector of Customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:
 - 3.4.5.1 A sale at the same commercial level but in different quantities;
 - 3.4.5.2 A sale at a different commercial level but in substantially the same quantities; or
 - 3.4.5.3 A sale at a different commercial level and in different quantities.

Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- 3.4.5.4 Quantity factors only;
- 3.4.5.5 Commercial level factors only; or
- 3.4.5.6 Both commercial level and quantity factors.

The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.


A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a dutiable value under the provisions of Method Three is not appropriate.

- 3.4.6 If in applying Method Three, more than one transaction value of similar goods is found, the lowest of such value shall be used to determine the dutiable value of the imported goods.

3.5 METHOD FOUR: THE DEDUCTIVE VALUE

- 3.5.1 By this method, the dutiable value is determined on the basis of sales in the Philippines of the goods being valued or of identical or similar imported goods, less certain specified expenses resulting from the importation and sale of the goods.
- 3.5.2 The sales in the Philippines must meet the following conditions:
- 3.5.2.1 The imported goods or identical or similar imported goods have been sold in the Philippines in the same condition as imported;
 - 3.5.2.2 Sales of the imported goods being valued or of identical or similar imported goods have taken place at or about the time of importation of the goods being valued. The expression "at or about the time of importation of the goods being valued" shall mean a period extending 45 days prior to and 45 days following the importation of the goods being valued;
 - 3.5.2.3 The purchaser must not be related to the importer from whom he buys such goods; and
 - 3.5.2.4 The purchaser in the Philippines must not have supplied assists, either directly or indirectly.
- 3.5.3 A deductive value is determined by making a deduction from the established price per unit for the aggregate of the following elements:
- 3.5.3.1 Commissions generally earned on a unit basis in connection with sales in the Philippines for goods of the same class or kind, or
 - 3.5.3.2 Additions usually made for in connection with sales profit and general expenses in the Philippines for goods of the same class or kind;
 - 3.5.3.3 The usual transport, insurance and associated costs incurred within the Philippines; and
 - 3.5.3.4 Customs duties and other national taxes payable in the Philippines by reason of the importation or sale of the goods.
- 3.5.4 The term "unit price" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

As an example of this, goods are sold from a price list which grants favorable unit prices for purchases made in larger quantities.

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<u>Sale quantity</u>	<u>Unit price</u>	<u>Number of sales</u>	<u>Total Quantity sold at each price</u>
1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

As another example of this, two sales occur. In the first sale, 500 units are sold at a price of 95 currency units each. In the second sale, 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

A third example would be the following situation where various quantities are sold at various prices.

(a) Sales


<u>Sale quantity</u>	<u>Unit price</u>
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

<u>Total quantity sold</u>	<u>Unit price</u>
65	90
50	95
60	100
25	105


In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

3.5.5 Any sale in the Philippines, as described in Section 3.5.4 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any

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of the elements specified Section 3.2.8.4 should not be taken into account in establishing the unit price for the purposes of this Method.

- 3.5.6 It should be noted that "profit and general expenses" referred to in Section 3.5.3 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer's figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.
- 3.5.7 The "general expenses" include the direct and indirect costs of marketing the goods in question.
- 3.5.8 Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of Section 3.5.3.4 shall be deducted under the provisions of Section 3.5.3.2 as general expenses.
- 3.5.9 In determining either the commissions or the usual profits and general expenses under the provisions Section 3.5.3 hereof, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-to-case basis by reference to the circumstances involved. Sales in the Philippines of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For purposes of this Method, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.
- 3.5.10 If no sales of the imported goods or of identical or similar imported goods took place at or about the time of importation of the goods being valued, it is permitted to use sales of the imported goods or identical or similar imported goods, sold in the Philippines in the same condition as imported, at the earliest date after importation of the goods being valued but before the expiration of 90 days after such importation. For the purpose of this Section, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.
- 3.5.11 If there are no sales of identical or similar imported goods in the condition as imported that meet all the above requirements, the importer may choose to use sales of the imported goods being valued after further processing.
- 3.5.11.1 Where the method in Section 3.5.11 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

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- 3.5.11.2 It is recognized that the method of valuation provided for in Section 3.5.11 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the Philippines that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-to-case basis.

3.5 METHOD FIVE: THE COMPUTED VALUE

- 3.6.1 Under this method, the dutiable value is determined on the basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of exportation to the Philippines of goods of the same class or kind.

- 3.6.2 The dutiable value may be calculated as follows:

- 3.6.2.1 Determine the aggregate of the relevant costs, charges and expenses or the value of:

3.6.2.1.1 Materials employed in producing the imported goods;

3.6.2.1.2 Fabrication, production or other processing costs for the imported goods (direct and indirect labor, factory overheads);

The following are to be added if not included in Sections 3.6.2.1.1 and 3.6.2.1.2 above:

3.6.2.1.3 Cost of containers which are treated as being one for Customs purposes with the goods in question;

3.6.2.1.4 Cost of packing whether for labor or materials;

3.6.2.1.5 Assists (apportioned in a reasonable manner in accordance with generally accepted accounting principles); and

3.6.2.1.6 Engineering, development, artwork, design, work, and plans and sketches undertaken in the Philippines and charged to the producer.

- 3.6.2.2 Add amount for profit and general expenses equal to that usually reflected in sales 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.

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being valued which are made by producers in the country of exportation for export to the Philippines.

- 3.6.2.3 Add the cost of transport, loading, unloading and handling charges, insurance and related charges to the port or place of entry in the Philippines as referred to in Sections 3.2.8.7 and 3.2.8.8.
- 3.6.3 As a general rule, dutiable value is determined under this Method on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the Philippines. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the Philippines. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the Philippines the necessary costing and to provide facilities for any subsequent verification which may be necessary.
- 3.6.4 The "cost or value" referred to Section 3.6.2.1 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.
- 3.6.5 The "cost or value" shall include the cost of elements specified in Sections 3.2.8.2 and 3.2.8.3. It shall also include the value, apportioned as appropriate under the provisions of Section 3.2.8, of any element specified in Section 3.2.8.4 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in Section 3.2.8.4.4 which are undertaken in the Philippines shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.
- 3.6.6 The "amount for profit and general expenses" referred to in Section 3.6.2.2 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales 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.

It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind.

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- 3.6.6.1 Such a situation might occur, for example, if a product is being launched in the Philippines and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned.
- 3.6.6.2 Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the Philippines and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales 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, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.
- 3.6.7 Where information other than that supplied by or on behalf of the producer is used for purposes of determining the computed value, the Collector of Customs shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Sec. VI-D of CAO No. 4-2004 (Confidentiality Clause).
- 3.6.8 The "general expenses" referred to in Section 3.6.2.2 covers the total costs (direct and indirect) of producing and selling the goods for export which are not included under Section 3.6.2.1.
- 3.6.9 Whether certain goods are "of the same class or kind" as other goods, must be determined on a case-to-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Method Five sales for export to the Philippines of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For purposes of Method Five, "goods of the same class or kind" must be from the same country as the goods being valued.
- 3.6.10 The Collector of Customs shall not require or compel any person not residing in the Philippines to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purpose of determining the dutiable value may be verified in another country with the agreement of the producer and provided they will give sufficient advance

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notice to the government of the country in question and the latter does not object to the investigation.

3.7 METHOD SIX: THE FALLBACK VALUE

- 3.7.1 When the dutiable value cannot be determined under any of the previous methods of valuation, it shall be determined by using other reasonable means consistent with the principles and general provisions of GATT 1994, the WVA, and on the basis of data available in the Philippines.
- 3.7.2 If the importer so requests, he shall be informed in writing of the dutiable value determined under Method Six and the method used to determine such value.
- 3.7.3 No dutiable value shall be determined under Method Six on the basis of:
 - 3.7.3.1 The selling price in the Philippines of goods produced in the Philippines;
 - 3.7.3.2 A system that provides for the acceptance for customs purposes of the higher of two alternative values;
 - 3.7.3.3 The price of goods in the domestic market of the country of exportation;
 - 3.7.3.4 The cost of production, other than computed values, that have been determined for identical or similar goods in accordance with Method Five hereof;
 - 3.7.3.5 The price of goods for export to a country other than the Philippines;
 - 3.7.3.6 Minimum dutiable values; or
 - 3.7.3.7 Arbitrary or fictitious values.
- 3.7.4 Dutiable values determined under the provisions of Method Six should, to the greatest extent possible, be based on previously determined dutiable values.
- 3.7.5 The methods of valuation to be employed under Method Six should be those laid down in Method One through Method Five, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Method Six.

Some examples of reasonable flexibility are as follows:

- 3.7.5.1 Identical goods - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in

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a country other than the country of exportation of the goods being valued could be the basis for customs valuation; dutiable values of identical imported goods already determined under the provisions Methods Four and Five could be used.

3.7.5.2 Similar goods - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; dutiable values of similar imported goods already determined under the provisions of Methods Four and Five could be used.

3.7.5.3 Deductive method - the requirement that the goods shall have been sold in the "condition as imported" in Section 3.5.2.1 could be flexibly interpreted; the "90 days" requirement referred to in Section 3.5.10 could be administered flexibly.

4.0 CASES WHERE THE COLLECTOR OF CUSTOMS HAS REASONS TO DOUBT THE TRUTH OR ACCURACY OF THE DECLARED VALUE

- 4.1 Published or established dutiable value, or any other value reference from whatever source, cannot be used as substitute value for customs valuation. However, such value information may be used as a risk management tool to establish doubt or to alert customs to do a value verification check either upfront thru a system created for the purpose or on a post-entry basis through the Post Entry Audit infrastructure.
- 4.2 When an import declaration has been presented and where the Collector of Customs has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the Collector of Customs may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Section 3.2.8.
- 4.3 If, after receiving further information, or in the absence of a response from the importer, the Collector of Customs still has reasonable doubts about the truth or accuracy of the declared value, then it is deemed that the dutiable value of imported goods cannot be determined under Method One. The Collector of Customs shall then proceed to determine the dutiable value under alternative methods sequentially and in the order of succession as provided by this Order.
- 4.4 Before taking a final decision, the Collector of Customs shall communicate to the importer, in writing if requested, the ground/s for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the Collector of Customs shall communicate to the importer in writing his decision and the ground/s in support thereof.
- 4.5 The above procedure is without prejudice to the importer's right to secure tentative release under sufficient guarantee and right to appeal pursuant to Customs

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Memorandum Order No. 37-2001 entitled "Revised Cargo Clearance Procedure to Implement Republic Act No. 9135" and Customs Administrative Order No. 5-2001, as amended by Customs Administrative Order No. 4-2004 and in relation to Customs Memorandum Order No. 7-2006 entitled "Establishment of Central Valuation and Classification Review and Ruling Committee (CVCRRC)", and other applicable customs laws, rules and regulations.

5.0 SEPARABILITY CLAUSE

The provisions of this Order are hereby ordered separable and in case any provision hereof is declared invalid, the other remaining provisions which are not affected shall remain in full force and effect.

6.0 REPEALING CLAUSE

All Customs Memorandum Orders, Memoranda or parts thereof which are inconsistent with this Order are hereby deemed superseded, amended or modified accordingly.

7.0 EFFECTIVITY

This Order takes effect immediately.

NAPOLEON L. MORALES
Commissioner

