



REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF FINANCE  
BUREAU OF CUSTOMS  
MANILA

**CUSTOMS ADMINISTRATIVE ORDER**  
No. 5-2001

**Subject: IMPLEMENTING REPUBLIC ACT 9135: AN ACT AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1464, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED (CUSTOMS CODE), AND FOR OTHER PURPOSES.**

By authority of Section 18 of Republic Act No. 9135, the following rules and regulations are hereby promulgated:

**SEC. I. OBJECTIVES**

- A. To enhance and consolidate the regulations concerning the WTO Valuation System.
- B. To implement the recordkeeping and post-entry audit systems in order to facilitate importation and protect government revenue at the same time.

**SEC. II. DUTIABLE VALUE**

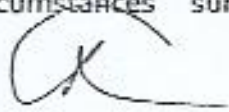
**A. General**

The dutiable value of imported goods shall be determined using one of the six methods of valuation listed below. These methods must be applied in sequence. The only exception is that the sequence of Methods 4 and 5 may be reversed at the request of the importer unless there shall be a demonstrated difficulty in the use of Method 5, in which case the Commissioner can reject such request. The methods are as follows.

**B. Method 1 - The Transaction Value**

1. The dutiable value for an imported article shall be the Transaction Value which 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 II.B.3 of this Order, and subject to the conditions specified in Section II.B.2 herein.

- 2. The dutiable value shall be the Transaction Value under method 1 if all of the following conditions are satisfied:
  - a. There must be a sale for export to the Philippines;
  - b. There must be no restrictions as to the disposition or use of the goods by the buyer, other than restrictions which:
    - 1) Are imposed or required by law or by Philippine authorities;
    - 2) Limit the geographical area in which the goods may be resold; or
    - 3) Do not substantially affect the value of the goods;
  - c. 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;
  - d. 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 II.B.3 of this Order; and
  - e. 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:
    - 1) they are officers or directors of one another's businesses;
    - 2) they are legally recognized partners in business;
    - 3) they are employer and employee;
    - 4) any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
    - 5) one of them directly or indirectly controls the other;
    - 6) both of them are directly or indirectly controlled by a third person;
    - 7) together they directly or indirectly control a third person; or
    - 8) they are related by affinity or consanguinity up to the fourth civil degree;
  - f. If the buyer and seller are related, the use of the transaction value method is acceptable if:
    - 1) the circumstances surrounding the transaction



demonstrate that the relationship did not influence the price actually paid or payable, or

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

- i) The transaction value in sales to unrelated buyers of identical goods or similar goods for export to the Philippines; or
- ii) The deductive value of identical or similar goods determined in accordance with Method 4; or
- iii) The computed value of identical or similar goods determined in accordance with Method 5.

3. In determining the Transaction Value, the following adjustments shall be added to the price actually paid or payable for the Imported goods being valued if such value has not been included in the price actually paid or payable:

- a. Commissions and brokerage fees (except buying commissions);
- b. Cost of Containers which are treated as being one for Customs purposes with the goods in question;
- c. Cost of packing whether for labor or materials;
- d. **Assists.** Assists 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. They include:
  - 1) Materials, components, parts and similar items incorporated in the imported goods;
  - 2) Tools, dies, moulds and similar items used in the production of the imported goods;
  - 3) Materials consumed in the production of the imported goods; and
  - 4) Engineering, development, artwork, design work, and plans undertaken elsewhere than in Philippines and necessary for the production of the imported goods;
- e. Royalties and license fees related to the goods being valued;
- f. 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;

- g. The cost of transport of the imported goods to the port of entry in the Philippines;
  - h. 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
  - i. The cost of insurance;
4. 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:
- a. Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
  - b. Cost of transport after importation;
  - c. Duties and taxes of the Philippines; and
  - d. Other permissible deduction allowed under the WTO Valuation Agreement.

**C. Method 2 - The Transaction Value for Identical Goods**

1. If the dutiable value of imported goods cannot be determined under the provisions of Section II.B of this Order, 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. The sale involving such identical goods must also be at the same commercial level and in substantially the same quantity as the goods being valued.
2. Definition of identical goods:
- a. Identical goods are defined as goods, which are:
    - 1) the same in all respects including:
      - i) physical characteristics,
      - ii) quality, and
      - iii) reputation,
    - 2) produced in the same country as the goods being valued, and
    - 3) produced by the producer of the goods being valued;
  - b. The definition of identical goods excludes imported goods for

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CAO-5-01

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;

- c. Where there are no identical goods produced by the same person in the country of production of the goods being valued, identical goods produced by a different person in the same country may be taken into account;
  - d. Minor differences in appearance would not preclude goods which otherwise conform to the definition from being regarded as identical.
3. If no sale of identical goods at the same commercial level and in substantially the same quantity as the goods being valued is found, the transaction value of identical goods sold at a different commercial level and/or in different quantity may be utilized. Such transaction value of identical goods shall be adjusted upwards or downwards to account for demonstrated differences between the goods being valued and the identical goods, to take account of:
- a. Commercial level differences;
  - b. Quantity differences; and
  - c. Significant differences for transportation costs due to variances in the mode and/or distance of transport.

**D. Method 3 - The Transaction Value of Similar Goods**

- 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. The sale involving such similar goods must also be at the same commercial level and in substantially the same quantity as the goods being valued.
- 2. Definition of similar goods:
  - a. Similar goods are defined as goods which, although not alike in all respects,
    - 1) Have like characteristics and like component materials;
    - 2) Are capable of performing the same functions as the goods being valued;
    - 3) Are commercially interchangeable with the goods being valued;

- 4) Are produced in the same country of the goods being valued; and
  - 5) Are produced by the producer of the goods being valued;
- b. 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;
  - c. 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. 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:
- a. Commercial level differences;
  - b. Quantity differences; and
  - c. Significant differences for transportation costs due to variances in the mode and/or distance of transport.

**E. Method 4 - The Deductive Value**

- 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.
- 2. The sales in the Philippines must meet the following conditions:
  - a. The imported goods or identical or similar imported goods have been sold in the Philippines in the same condition as imported;
  - b. Sales of the goods being valued or of identical or similar goods have taken place at or about the time of importation of the goods being valued;
  - c. If no sales took place at or about the time of importation, 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

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- but before the expiration of 90 days after such importation;
- d. 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 goods being valued after further processing;
  - e. The purchaser must not be related to the importer from whom he buys such goods;
  - f. The purchaser in the Philippines must not have supplied assists, either directly or indirectly;
  - g. The expression "at or about the same time", when applied to the deductive method, shall mean a period extending 45 days prior to and 45 days following the importation of the goods being valued.
3. A deductive value is determined by making a deduction from the established price per unit for the aggregate of the following elements:
    - a. Commissions generally earned on a unit basis in connection with sales in the Philippines for goods of the same class or kind; or
    - b. Additions usually made for in connection with sales profit and general expenses in the Philippines for goods of the same class or kind; and
    - c. The usual transport, insurance and associated costs incurred within the Philippines; and
    - d. Customs duties and other national taxes payable in the Philippines by reason of the importation or sale of the goods.

#### F. Method 5 - The Computed Value

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.
2. The Dutiable value may be calculated as follows:
  - a. Determine the aggregate of the relevant costs, charges and expenses or the value of:
    - 1) materials employed in producing the imported goods, and
    - 2) production or other processing costs for the imported goods (direct and indirect labor, factory overheads);

- b. The following are to be added if not included in a.1) and a.2) above:
- 1) Cost of Containers which are treated as being one for Customs purposes with the goods in question;
  - 2) Cost of packing whether for labor or materials;
  - 3) Assists (apportioned in a reasonable manner in accordance with generally accepted accounting principles);
  - 4) Engineering, development, artwork, design work, and plans and sketches undertaken in the Philippines and charged to the producer;
- c. Add amounts for profit and general expenses, usually reflected in export sales to the Philippines, by producers in the country of export of goods of the same class or kind;
- d. Add the cost of transport, insurance and related charges to the port or place of importation.

**G. Method 6 - The Fallback Value**

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 agreement on the implementation of Article VII of the General Agreement on Tariffs and Trade as contained in the Uruguay Round Final Act, and on the basis of data available in the Philippines.

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.

No dutiable shall be determined under Method Six on the basis of:

1. The selling price in the Philippines of goods produced in the Philippines;
2. A system that provides for the acceptance for customs purposes of the higher of two alternative values;
3. The price of goods in the domestic market of the country of exportation;
4. The cost of production, other than computed values, that have been determined for identical or similar goods in accordance with Method Five hereof;



**D. Appeals**

Importers who are not satisfied with the dutiable value determined by Customs could file an appeal in the form of a formal protest pursuant to Section 2308 of the Customs Code within fifteen (15) days from date additional duties and taxes are paid or collected from the guaranty posted, and upon payment of the appropriate docket fee required under existing regulations.

**E. Finality of Liquidation of Import Entries**

The liquidation of an import entry shall be deemed final and conclusive upon all parties after the expiration of three (3) years from the date of the final payment of the duties due, except where:

1. Fraud as defined in Section VI.C.1.c hereof as committed;
2. A protest has been filed under the provision of Section 2308 of the Customs Code;
3. Where the import entry is selected for post audit within the three (3) year period required for record-keeping provided that once started, the audit can be completed beyond said period;
4. The liquidation of the import entry was merely tentative.

**SEC. IV. Recordkeeping and Compliance Audit**

**A. Recordkeeping**

1. Importers to keep records.
  - a. Upon the effectivity of Republic Act No. 9135, all importers are required to keep at their principal place of business, for a period of three (3) years from the date of filing of the import entry, all the records of their importations and/or books of accounts, business and/or computer systems and all other customs commercial data, in whatever form, including payment records relevant for the verification of the accuracy of the transaction value declared by the importers/customs brokers on the import entry.
  - b. The term "importer" shall include the importer of record/consignee, beneficial owner, agent of the persons effecting the importation in question or any other person or entity who knowingly causes the goods to be imported. The phrase "knowingly causes the goods to be imported" covers domestic transactions where: 1) the terms and conditions of the importation are controlled by the person placing the order with the importer (for example, the importer is not an independent contractor but rather is the agent of the person placing the order; whereas a consumer who purchases an

imported automobile from a domestic dealer would not be required to maintain records, a transit authority that prepared detailed specifications from which imported subway cars or buses were manufactured would be required to maintain records); or 2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of imported goods.

2. The following records are required to be kept by importers:
  - a. Company or entity structure including the following to the extent that they are required for submission to the Securities and Exchange Commission or to the Bureau of Domestic Trade, as the case may be:
    - 1) Articles of incorporation, articles of partnership and the like;
    - 2) List of incorporators, stockholders, partners, board of directors, owner;
    - 3) Organizational structure;
    - 4) Management and key personnel including authorized declarants and their specimen signatures;
    - 5) Capital composition, stock and transfer book;
    - 6) Principals and/or subsidiaries and their capital composition, if applicable;
    - 7) List of exporter/suppliers to which the importer is related pursuant to Section II.B.2.e of this Order;
  - b. Ordering and purchase documentation including the following:
    - 1) Sales and other related agreements, in whatever form, including, whenever applicable, those covering distribution, royalty, agency, warranty, terms of payment, and the like;
    - 2) Correspondence or communication relating to the import transaction, in whatever form, including, whenever applicable, purchase orders, vouchers, confirmations, pro-forma invoice, acknowledgment receipts, notices, advisories, and the like;
    - 3) Product description or specifications. Brochures, manual, catalogue, pamphlet, flier, literature, if applicable;

- c. Shipping, importation, exportation, and transportation documentation including the following to the extent that they are required by law or regulation to be produced and/or presented in the course of import clearance processing or for internal revenue taxation purposes, as the case may be:
- 1) Import/export entry;
  - 2) Invoice/consignment notes;
  - 3) Import and export licenses/permits;
  - 4) Ocean bill of lading, master air waybill, house air waybill, consolidator bill of lading;
  - 5) Shipping instructions, freight forwarders instructions;
  - 6) Certificates of Origin, Certificates of Eligibility, Certificate of Inspection and Loading;
  - 7) Freight and insurance contracts;
  - 8) Packing lists;
  - 9) Transshipment permits, boatnotes, special permits to transfer;
  - 10) Quota Allocation/Certificates;
  - 11) Customs brokerage agreements, billings, statement of accounts, receipts;
  - 12) Receipts for arrastre charges, cargo handling and storage fees;
  - 13) Short shipped/bad order reports, if applicable;
  - 14) Goods tally records, if applicable;
- d. Manufacturing, stock, and resale documentation including the following to the extent that they are required by the internal revenue laws and Bureau of Internal Revenue regulations to be generated/produced and kept:
- 1) Inwards goods register/receipts journal;
  - 2) Stock register/inventory records;
  - 3) Production records;
  - 4) Costing records;
  - 5) Sales records;
- e. Banking and accounting information including the following to the extent that they are required by internal revenue laws and Bureau of Internal Revenue regulations to be

CAO-3-01

generated/produced and kept:

- 1) Letters of credit, applications for letter of credit, bank details;
  - 2) Remittance advice;
  - 3) Receipts, cashbooks;
  - 4) Schedules of accounts payables and accounts receivables;
  - 5) Credit card transactions;
  - 6) Telegraphic money transfers;
  - 7) Offshore monetary transactions;
  - 8) Cheque records;
  - 9) Evidence of payments by any other means, including information detailing non-cash compensation transactions;
- f. To the extent required by internal revenue law and Bureau of Internal Revenue regulations to be produced/generated and kept, charts and codes of accounts, ledgers, financial statements, accounting instruction manuals, and systems and program documentation that describes the accounting system used by the importer.
- g. Whenever applicable, papers, books, registers, discs, films, tapes, sound tracks, and other devices or things in or on which information contained in the records described in paragraphs (a) to (f) of this regulation are recorded or stored.
3. Upon the effectivity of R.A. 9135, all customs brokers are required to keep at their principal place of business, for a period of three (3) years from the date of importation copies of the importation records in whatever form covering transactions that they handle including records enumerated in Section IV.A.2 paragraphs c, f and g of this Order.
4. The Bureau of Customs shall likewise keep a record of audit results in a database of importer and broker profiles, to include but not be limited to:
- a. Articles of Incorporation;
  - b. The company structure, which shall include but not be limited to:
    - 1) Incorporators and Board of Directors
    - 2) Key officers; and



3) Organizational Structure

CAO-5-01

- c. Key importations;
  - d. Privileges enjoyed;
  - e. Penalties; and
  - f. Risk category (ies).
5. Where a document in a foreign language is presented to a Customs officer in relation to the carrying out of any duty or the exercise of any power of the Bureau of Customs under the Customs Code or any law under enforcement or administration of Customs, or rules or regulations promulgated thereunder, said document must be accompanied with a translation in English or Filipino, certified correct under oath by the translator.

**B. Compliance Audit**

1. The importers/customs brokers shall allow any customs officer authorized by the Commissioner of Customs to enter during office hours any premises or place where the records referred to in Section IV.A, paragraphs 1, 2 and 3 above are kept to conduct audit examination, inspection, verification and/or investigation of:
  - a) The document flow;
  - b) Financial flow;
  - c) Goods inventory; and
  - d) Other business processes

Necessary or relevant in determining the adequacy and integrity of the manual or electronic system or systems by which such records are created and stored and to ensure compliance with customs laws and existing rules and regulations, particularly in relation to customs valuation, tariff classification, and country of origin with the end in view of collecting the proper duties and taxes.

2. In addition, the authorized customs officer may require the importer and/or broker to make certified copies of any such documents or extracts thereof. Any record taken or borrowed by the authorized customs officer must, within twenty-four (24) working hours be returned to its custodian.
3. A copy of any such document certified by or on behalf of the importer/broker is admissible in evidence in all courts as if it were the original.
4. An authorized customs officer shall not enter any premises under this Section unless, before so doing, the officer produces to the

LAO-3-01

person in charge of the premises the following: 1) duplicate original of the AUDIT NOTIFICATION LETTER (ANL) issued by the Commissioner of Customs addressed to the importer/broker, and 2) official Customs identification card. The person in charge of the premises entered by an officer shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this Section.

5. Unless otherwise provided herein or in other provisions of law, the Bureau of Customs may, in case of disobedience, invoke the aid of the proper regional trial court within whose jurisdiction the matter falls. The court may punish contumacy or refusal as contempt. In addition, the fact that the importer/broker denies the authorized customs officer full and free access to importation records during the conduct of a post-entry audit shall create a presumption of inaccuracy in the transaction value declared for their imported goods and constitute grounds for the Bureau of Customs to conduct a re-assessment of such goods using the alternate methods of valuation as applicable.
6. This is without prejudice to the criminal sanctions imposed by laws and administrative sanctions that the Bureau of Customs may impose against contumacious importers under existing laws and regulations including the authority to hold delivery or release of their imported articles.

#### C. Scope of the Compliance Audit

1. The audit of importers shall be undertaken:
  - a. When firms are selected by a computer-aided risk management system, the parameters of which are to be based on objective and quantifiable data which shall include, but not be limited to, the following:
    - 1) Relative magnitude of customs revenue from the firm;
    - 2) The rates of duties of the firm's imports;
    - 3) The compliance track record of the firm; and
    - 4) An assessment of the risk to revenue of the firm's import activities;
  - b. When errors in the import declaration are detected which if uncorrected would result in substantial revenue loss or grave distortion of relevant statistical data;
  - c. When firms voluntarily request to be audited, subject to the approval of the Commissioner of Customs.
2. Brokers shall be audited only to validate audits of their importer clients and/or fill in information gaps revealed during an audit of

their importer clients.

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#### D. Conduct of Compliance Audit

The Commissioner of Customs shall prepare a set of compliance audit guidelines, e.g. manual, to strictly govern the audit system and procedure as well as the conduct of the audit examination itself to achieve the highest level of objectivity and fairness, efficiency, and transparency. The guideline/manual shall include the following procedural/operational concerns:

1. Profiling/Information Analysis
2. Audit Notification
3. Audit Preparation / Audit Plan
4. Pre-Audit Conference with Auditee
5. Conduct of Audit Proper
6. Exit Conference
7. Audit Reporting
8. Audit Monitoring

#### SEC. V. Compulsory Acquisition

In order to protect the Government's revenues against the undervaluation of goods subject to ad valorem duty, the Commissioner of Customs may acquire grossly undervalued goods for a price equal to their declared Customs value plus any duties already paid on the goods, payment for which shall be made within ten (10) working days from issuance of a warrant signed by the Commissioner of Customs for the acquisition of such goods. For this purpose, there is gross undervaluation when the discrepancy between the declared Customs value and any of the test values enumerated in Section II.B paragraph f.2.i to iii hereof is two hundred percent (200%) or higher using the following formula:

$$= \frac{\text{difference between test value and declared value}}{\text{declared value}} \times 100$$

and that the importer fails to satisfactorily explain or justify the difference between the declared value and the test value as resulting from an arms length transaction.

An importer who is dissatisfied with a decision of the Commissioner of Customs pertaining to this Section may, within twenty (20) working days after the date on which notice of the decision is given,



ENO-5-01

appeal to the Secretary of Finance and thereafter if still dissatisfied, to the Court of Tax Appeals as provided for in Section 2402 of the Customs Code.

Where no appeal is made by the importer, or upon reaffirmation of the Commissioner's decision during the appeals process, the Bureau of Customs or its agent shall sell the acquired goods pursuant to existing laws and regulations.

The right of the Commissioner under this Section is without prejudice to the exercise by the Bureau of Customs of any other power with respect to the disposition of the goods or any liability of the importer or any other person with respect to an offense committed in the importation of the goods.

## **SEC. VI. Administrative and Criminal Offenses**

### **A. Failure to keep records.**

Any person who fails to keep and maintain all the records required to be kept and maintained under Section IV.A of this Order shall be subject to the following:

1. Administrative fine equivalent to twenty percent (20%) ad valorem on the article/s subject of the importations for which no records were kept and maintained as prescribed in Section 2504 of the Customs Code.
2. Hold delivery or release of subsequent imported articles to answer for the fine and any revised assessment.
3. Criminal prosecution punishable with a fine of not less than one hundred thousand pesos (PhP100,000) but not more than two hundred thousand pesos (PhP200,000) and/or imprisonment of not less than two (2) years and one (1) day but not more than six (6) years.

### **B. Failure and/or refusal to give full and free access.**

Any importer and/or broker who denies an authorized officer full and free access under Section IV.B hereof to the records required to be kept and maintained as specified in Section IV.A of this Order shall be subject to the following:

1. Punishment for contempt, for contumacy or refusal from the proper court having criminal jurisdiction.
2. Re-assessment of the importations subject to audit applying the correct valuation method based on available data, the declared transaction value being presumed inaccurate.
3. Administrative fine equivalent to twenty percent (20%) ad valorem on the article/s subject of the importations for which no





records were kept and maintained as prescribed in Section 2504 of the Customs Code.

4. Hold delivery or release of subsequent imported articles to answer for the fine and any revised assessment.
5. Criminal prosecution punishable with a fine of not less than one hundred thousand pesos (PhP100,000) but not more than two hundred thousand pesos (PhP200,000) and/or imprisonment of not less than two (2) years and one (1) day but not more than six (6) years.

**C. Failure to pay correct duties and taxes on imported goods.**

1. Any person who, after being subjected to compliance audit or post-entry audit and examination as provided in Sections IV.B and IV.C, is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to three (3) degrees of culpability subject to any mitigating, aggravating or extraordinary factors that are clearly established by the available evidence:
  - a) **Negligence.** When a deficiency results from an offender's failure, through an act or acts of omission or commission, to exercise reasonable care and competence to ensure that a statement made is correct, it shall be determined to be negligent and punishable by an administrative fine equivalent to not less than one-half (1/2) but not more than two (2) times the revenue loss.
  - b) **Gross Negligence.** When a deficiency results from an act or acts of omission or commission done with actual knowledge or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligation under these rules or the Customs Code, it shall be determined to be grossly negligent and punishable by an administrative fine equivalent to not less than two and a half (2-1/2) but not more than four (4) times the revenue loss.
  - c) **Fraud.** When the material false statement or act in connection with the transaction was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence, it shall be determined to be fraudulent and be punishable by an administrative fine equivalent to not less than five (5) times but not more than eight (8) times the revenue loss.
  - d) Criminal prosecution under Section 3611.
2. However, except in cases of fraud, the Commissioner of Customs may, pursuant to Section 2316 of the Customs Code and subject to the approval of the Secretary of Finance, exercise his power to compromise the imposition of the fine prescribed in Section VI.C

EXD-5-01

when the importer makes a voluntary and full disclosure of the deficiency prior to the commencement of the audit on a date fixed by the Commissioner, provided that the compromise shall only be to the extent of the voluntary disclosure made.

**D. Confidentiality Clause**

All information which is by nature confidential, or which is provided on a confidential basis for the purposes of Customs valuation, or which was confidentially obtained in the course of the conduct of compliance audit, shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the persons or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings, and violation of such confidentiality shall be prosecuted under subsection (j) of Section 3604 of the Customs Code.

**E. The decision of the Commissioner, upon proper hearing, to impose the penalties as prescribed in Section VI.A, B, and C may be appealed in accordance with Section 2402 of the Customs Code. The Commissioner shall promulgate the procedural rules and regulations to implement its authority under this Section.**

**F. Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of the Customs Code or other laws enforced by the Bureau of Customs shall be brought in the name of the Government of the Philippines and the prosecution thereof shall be conducted by Customs officers. However, the determination of probable cause in criminal cases for purposes of filing the information in the appropriate court shall remain with the prosecutors of the Department of Justice or other authorized officials.**

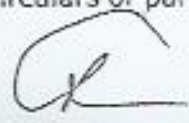
No civil or criminal action for the recovery of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

**SEC. VII. Authority of the Commissioner to Promulgate Additional Implementing Rules and Regulations**

The Commissioner of Customs may promulgate additional rules and regulations to effectively implement the provisions of Republic Act No. 9135 and this Order.

**SEC. VIII. Repealing Clause**

Customs Administrative Order No. 2-99 and all Orders, Memorandums, Circulars or parts thereof which are inconsistent with



CAO-5-01

this Order are hereby deemed repealed and/or modified accordingly.

**SEC. IX. Separability Clause**

If any part of this Order is declared by the Courts as unconstitutional or contrary to existing laws, the other parts so declared shall remain in full force and effect.

**SEC. X. Effectivity**

This order shall take effect fifteen (15) days after publication.



**TITUS B. VILLANUEVA**  
Commissioner

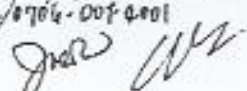
APPROVED:



**JOSE ISIDRO CAMACHO**

Secretary of Finance

1116-0704-008-001



Date of Approval:

NOV 16 2001



Republic of the Philippines  
**DEPARTMENT OF FINANCE**

Roxas Boulevard Corner Palilo Ocampo, Sr. Street  
Manila 1004

NOV 16 2001  
DATE:

EXO-3-01  
RECEIVED CUSTOMS  
July 9

1<sup>st</sup> Indorsement  
November 16, 2001

Respectfully referred to the **Commissioner of Customs TITUS B. VILLANUEVA** for appropriate action is the Customs Administrative Order implementing Section 201 of the Tariff and Customs Code, as amended by Republic Act No. 9135, bearing the approval of the Secretary of Finance.

Please furnish this Department with a BOC numbered/recorded copy of such Customs Administrative Order.

Thank you.

*James H. Roldan*  
**JAMES H. ROLDAN**  
Director IV

## EXECUTIVE SUMMARY

CAO-5-01

In 1996, Congress passed into legislation Republic Act No. 8181 which provided for the shift in customs valuation from the Home Consumption Value (Fair Market Value) to the General Agreement on Tariff and Trade (GATT) Valuation Code, otherwise known as the Transaction Value Method (TV system). The TV system, which was adopted pursuant to the Philippine Government's commitment under the WTO Agreement on Customs Valuation, was implemented only on January 1, 2000 in view of the 5-year implementation deferment period provided for in the WTO Agreement and in the amendatory law itself.

Republic Act No. 8181, however, was observed to be lacking in technical compliance with the mandate of the WTO Valuation Agreement in terms of phraseology and content. It likewise included a provision which had the effect of decreeing the mandatory use of published values as substitute values in lieu of the declared transaction value, a feature that did not appear to be consistent with the GATT Code. Finally, there was a need to enact a law that should provide a safety net against possible abuses in value declarations that rely primarily on self-assessment and not on reference values as had been the case under the old valuation system. The safety net being envisioned was the post entry audit mechanism, a valuation control system that has evolved based on the long experience of many customs administrations, mostly, of developed countries, in using the TV system. To address these concerns, Republic Act No. 9135 was passed into law in May of this year.

The proposed Customs Administrative Order is designed to implement Republic Act No. 9135. Its essential contents which already factored in the private sector suggestions are summarized as follows:

1. Section II defines the primary and the 5 alternate methods of valuation under the WTO Customs Valuation Agreement. The elements and conditions for the application of each method are clearly and logically presented. Its wordings reflect better the text and spirit of the TV system compared to the old law (RA 8181). The provision on the mandatory use of published values was impliedly repealed.
2. Section III sets down administrative policies on the role of published values as a risk management tool (and no longer as a substitute value); currency conversion which has to be published; provisional remedy of tentative release under guaranty when a valuation issue arises resulting in delay; when liquidation of imports is considered final; and the appeals process in case of adverse decision by customs.
3. Section IV covers the new provisions on record-keeping and compliance audit. It states the obligation of importers and customs brokers to keep within the specified period of three (3) years, certain import and import-related and

CAO-5-01

business records under pain of penalty. The term "importer" is defined to know who is obliged under the law. It enumerates the kind or class of documents or records that must be kept to minimize or prevent surprises or arbitrariness. Records, documents, or data listed are essentially those already required under existing laws and regulations relating to importation, corporate or business registration, and internal taxation. The target and scope of audit are circumscribed, the audit authority is established, and the conduct of audit to be outlined in a separate manual, to ensure fairness, transparency, and accountability.

4. Section V refers to the new and potentially controversial provision on the government's right to compulsorily acquire grossly undervalued imports. It tries to define "grossly undervalued" goods in a manner that will limit the use of this control mechanism in only extreme cases as a measure of last resort. To do otherwise is to create huge administrative problems which customs may not be able to handle given the resulting delays in determining which would come under the mantle of this provision, the opportunity for harassment, the funding requirements and source, storage and warehousing, administrative staffing, and disposition management. Please note that this provision was lifted from the New Zealand model. It was intended to serve only as a deterrent. NZ customs never exercised that option in its jurisdiction. During the Committee deliberations at the House, the Bureau had registered its objection to it as being inconsistent with the GATT Code but to no avail.
5. Section VI defines the criminal and administrative sanctions against non-compliance with the obligations and violation of rights created under the new law.

Note, however, that Sections VI.A and VI.B.3 (administrative sanction against failure to keep records) imposing 20% penalty as administrative fine pursuant to Section 2504 of the Customs Code is being challenged by PCCI, claiming that (a) the law (RA 9135) does not provide for administrative sanction and (b) that Section 2504 (an old provision) contemplates of a situation other than failure to keep records or refusal to give access to Customs. We resolved to maintain the administrative sanction (20% fine) for the following reasons:

- 5.1 Section 15 of RA 9135 provides for the authority to impose administrative sanction against failure to keep record or contumacious importers "under existing laws..."
- 5.2 The absence of the administrative penalty will weaken the enforcement of the record-keeping requirement.



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

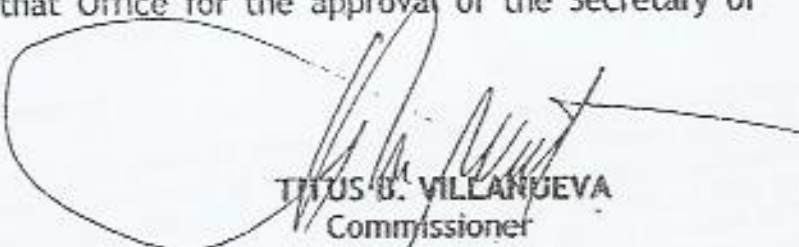
CAO-5-01

1<sup>ST</sup> Indorsement  
03 October 2001

Respectfully forwarded to the Honorable Secretary of Finance the within Customs Administrative Order (CAO) embodying the implementing rules and regulations of Republic Act No. 9135, which further amends Section 201 of the Tariff and Customs Code of the Philippines, and providing, among others, a Post Entry Audit (PEA) system. The CAO took this final form after a series of consultation with, and after securing the views and comments thereon of the private sector, namely, the Philippine Chamber of Commerce and Industry, the Federation of Philippine Industries, the Purchasing and Materials Management Association of the Philippines, the Chamber of Customs Brokers, Inc. and the Port Users Confederation.

Also, attached herewith is an Executive Summary which discusses the highlights of the said CAO.

The said CAO is already signed by the Commissioner of Customs and is now being forwarded to that Office for the approval of the Secretary of Finance.

  
TITUS B. VILLANUEVA  
Commissioner

(BOC-110-011)