

No. S 53

**CUSTOMS ACT
(CHAPTER 36)**

CUSTOMS (VALUATION OF IMPORTED GOODS) RULES, 2001

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In exercise of the power conferred by section 133 of the Customs Act, the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Rules —

PART I

CITATION, APPLICATION AND INTERPRETATION

Citation and commencement.

1. These Rules may be cited as the Customs (Valuation of Imported Goods) Rules, 2001 and shall commence on the same day as the Customs (Amendment) Order, 2001.

Application.

2. The provisions of Article VII of the General Agreement on Tariffs and Trade 1994 are adopted and shall have the effect of implementing procedures in respect of customs valuation and matters related thereto.

Interpretation.

3. (1) In these Rules unless the context otherwise requires —

"computed unit price", in relation to goods, means the computed value of the goods divided by the number of the units of the goods;

"computed value" means the value determined in accordance with the provisions of rule 10;

"country of export" means the country from which the goods are shipped directly to Brunei Darussalam or, as the case may be, the country from which the goods are deemed to be shipped pursuant to these Rules;

"deductive value" means the value determined in accordance with the provisions of rule 9;

"goods of the same class or kind", for the purposes of these Rules, means imported goods that —

(a) are within a group or range of imported goods produced by a particular industry or sector of industry that includes identical goods or similar goods in relation to the goods being valued; and

(b) for the purposes of —

(i) rule 6, were produced in any country and exported from any country; and

(ii) rule 10, were produced in and exported from the same country as the country in and from which the imported goods being valued were produced and exported;

"identical goods" means goods that —

(a) are the same in all respects, including the physical characteristics, quality and reputation, as the imported goods being valued, with the exception of minor differences in appearance that do not affect the value of the goods;

(b) were produced in the same country in which the imported goods being valued were produced; and

(c) were produced by or on behalf of the person by or on behalf of whom the goods being valued were produced,

but does not include imported goods where engineering, development work, art work, design work, plans or sketches undertaken in Brunei Darussalam were supplied, directly or indirectly, by the buyer of such goods free of charge or at a reduced cost for use in connection with the production and sale for export of such goods;

"price actually paid or payable" means, in relation to the sale of goods for export to Brunei Darussalam, means the aggregate of all payments made or to be made, directly or indirectly, in respect of the goods by the buyer to or for the benefit of the seller;

"produced" includes grown, manufactured and mined;

"similar goods", in relation to goods being valued, means imported goods which —

(a) closely resemble the goods being valued in respect of their component materials and characteristics;

(b) are capable of performing the same functions as, and of being commercially interchangeable with, the goods being valued;

(c) were produced in the same country as the imported goods being valued; and

(d) were produced by or on behalf of the person by or on behalf of whom the goods being valued were produced,

but does not include imported goods where engineering, development work, art work, design work, plans or sketches undertaken in Brunei Darussalam were supplied, directly or indirectly, by the buyer of such goods free of charge or at a reduced cost for use in connection with the production and sale for export of such goods;

"sufficient information", in respect of the determination of any amount, difference or adjustment, means objective and quantifiable information that establishes the accuracy of the amount, difference or adjustment;

"transaction value", in respect of goods, means the value of the goods determined in accordance with rules 4 and 12.

(2) For the purposes of these Rules, where there are no identical goods or similar goods, as the case may be, in relation to goods being valued but there are goods that would be identical goods or similar goods, as the case may be, if they were produced by or on behalf of the person by or on whose behalf the goods being valued were produced, those goods shall be deemed to be identical goods or similar goods, as the case may be.

(3) (a) For the purposes of these Rules, persons shall be deemed to be "related" only if —

- (i) each such person is an officer or director of each other's businesses or of the same two corporations, associations, partnerships or other organisations;
- (ii) they are legally recognised as partners in business;
- (iii) they are employer and employee;
- (iv) any other person directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of each such person;
- (v) one directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of the other;
- (vi) they directly or indirectly control or are controlled by the same third person;

- (vii) one directly or indirectly controls or is controlled by the other; or
- (viii) they are members of the same family connected by blood relationship, marriage or registered adoption.

(b) Persons who are associated in the business with one another in that one is the sole agent or sole distributor or sole concessionaire, however described, of the other, shall be deemed to be related for the purposes of these Rules, if they fall within the criteria of rule 3(2)(a).

PART II

DETERMINATION OF THE METHOD OF VALUATION

Transaction value as primary basis of determining customs value of imported goods.

4. The customs 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 Brunei Darussalam adjusted in accordance with the provisions of rule 12, provided that —

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which —

- (i) are imposed or required by law or by the public authorities in Brunei Darussalam;
- (ii) limit the geographical area in which the goods may be resold; or
- (iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) 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 rule 12; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is accepted for customs purposes under the provisions of rule 5(3).

Custom's administration examination of circumstances surrounding the sale of imported goods.

5. (1) In determining whether the transaction value is acceptable for the purposes of rule 4 paragraph *(d)*, the customs administration would be responsible for examining the circumstances surrounding the sale of the imported goods and must be satisfied that the relationship did not in any manner affect or influence the price of such goods.

(2) In circumstances where the customs administration has grounds for believing or considering that the relationship influenced the price, such grounds shall be communicated to the importer, in writing or otherwise, and the importer shall be given reasonable opportunity to respond.

(3) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of rule 4 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time –

- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to Brunei Darussalam;
- (ii) the deductive value of identical or similar goods as determined under the provisions of rule 9;
- (iii) the computed value of identical or similar goods as determined under and subject to the provisions of rule 10:

Provided that due account shall be taken of demonstrated differences in commercial levels, adjustments in accordance with the provisions of rule 12 and costs incurred by the seller in sales in which the seller and buyer are not related and costs that are not incurred by the seller in sales in which the seller and buyer are related.

(4) Rule 5(3) is to be used only for comparison purposes at the initiative of the importer and no substitute values may be established thereof under this provision.

Transaction value of identical goods.

6. (1) *(a)* Where the customs value of the imported goods cannot be determined under the provisions of rule 4 and 5, the customs value shall be the transaction value of identical goods sold for export to Brunei Darussalam and exported at or about the same time as the goods being valued.

(b) In applying this rule, 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 value of imported goods.

(c) Where no such sale as referred to in paragraph (b) is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustments leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in rule 12(1)(e) are included in the transaction value of identical goods, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

(3) If, in applying this rule, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Transaction value of similar goods.

7. (1) Where the customs value of the imported goods cannot be determined under the provisions of rules 4 and 6, the customs value shall be the transaction value of similar goods sold for export to Brunei Darussalam and exported at or about the same time as the goods being valued and were sold under the following conditions —

(a) to a buyer at the same or substantially the same trade level as the buyer of the goods being valued; and

(b) in the same or substantially the same quantities as the goods being valued.

(2) The provisions of rule 6 shall, *mutatis mutandis*, also apply in respect of similar goods.

Applicability of appropriate rules.

8. (a) Where the customs value of the imported goods cannot be determined under the provisions of rules 4, 6 and 7, the customs value shall be determined under the provisions of rule 9 or, when the customs value cannot be determined under that rule, under the provisions of rule 10 except that, on the written request of the importer, the order of consideration of the valuation basis provided for in rules 9 and 10 shall be reversed.

(b) The reversal of order of consideration in paragraph *(a)* is subject to Rule 10(4).

Deductive value.

9. (1) *(a)* If the imported goods or identical or similar imported goods are sold in Brunei Darussalam in the condition as imported at or about the time of declaration for determination of value, the customs value of the imported goods in accordance with the provisions of this rule shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to the following deductions —

- (i) either the commissions usually paid or agreed to be paid, or, the additions usually made for profit and general expenses in connection with sales in Brunei Darussalam of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within Brunei Darussalam; and
- (iii) the customs duties and other taxes payable in Brunei Darussalam by reason of the importation or sale of the goods.

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph (1)*(a)*, be based on the unit price at which the imported goods or identical or similar imported goods are sold in Brunei Darussalam in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety days after such importation.

(2) If neither the imported goods nor identical nor similar imported goods are sold in Brunei Darussalam in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Brunei Darussalam who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph (1)*(a)*.

Computed value.

10. (1) In the event that the customs value of the imported goods cannot be determined by application of the provisions of rules 4 and 7, it shall thus be based on the computed value of the imported goods.

(2) The computed value of the imported goods being valued shall consist of the sum of –

(a) the costs, charges and expenses incurred in respect of, or the value of materials and fabrication or other processing used in producing the imported goods as determined in the manner prescribed including and without limiting the generality of the following –

- (i) the costs, charges and expenses incurred referred to in rule 12(1)/a/(ii);
- (ii) the value of any of the goods and services referred to in paragraphs (i) to (iv) of rule 12(1)/b) determined and apportioned to the goods being valued as referred to in that rule, whether or not such goods and services have been supplied free of charge or at a reduced cost;
- (iii) the costs, charges and expenses incurred by the producer in respect of engineering, development work, artwork, design work, plans or sketches undertaken in Brunei Darussalam that were supplied, directly or indirectly, by the buyer of such goods being valued for use in connection with the production and sale for export of those goods to the extent that such elements are charged to the producer of such goods apportioned to the goods being valued as referred to in paragraphs (i) to (ii) of rule 12(1)/a);

(b) the amount determined in the manner prescribed for profit and general expenses, considered together as a whole, generally reflected in sale for export to Brunei Darussalam of goods of the same class or kind as the goods being valued, made by the producers of the goods to buyers in Brunei Darussalam who are not related to the producers from whom they buy the goods at the time the goods are sold to them.

(3) For the purpose of paragraphs (1) and (2), the expression 'general expenses' means the direct and indirect costs, charges and expenses of producing and selling goods for export other than those referred to in paragraph (2)/a).

(4) Paragraphs (1) to (3) shall come into force on a date not later than three years following the date of commencement of these Rules and this date is to be notified in the *Gazette*.

Residual basis of valuation.

11. (1) If the customs value of the imported goods cannot be determined under the provisions of rules 4 to 10, the customs value shall be determined on the basis of information available in Brunei Darussalam whereby a value is derived from

the methods of valuation set out in the preceding provisions of these Rules interpreted in a flexible manner and reasonably adjusted to the extent necessary to arrive at a customs value of the goods.

(2) No customs value shall be determined under the provisions of this rule on the basis of —

- (a) the selling price in Brunei Darussalam of goods produced therein;
- (b) a system which provides for the acceptance of the higher of two alternative values for customs purposes;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with rule 10;
- (e) the price of goods for export to a country other than Brunei Darussalam;
- (f) minimum customs value; or
- (g) arbitrary or fictitious values.

(3) The importer, upon request, shall be informed in writing of the customs value determined under the provision of this rule and the method used to determine such value.

Adjustment of price actually paid or payable.

12. (1) In determining the customs value under the provisions of rule 4, there shall be added to the price actually paid or payable for the imported goods —

- (a) to the extent that they are incurred by the buyer but are excluded in the price actually paid or payable for the goods —
 - (i) commissions and brokerage, except buying commissions;
 - (ii) the costs and charges incurred by the buyer in respect of packing of the goods, whether for labour or materials, including the cost of cartons, cases, containers and coverings that are treated as being one for customs purposes with the goods in question and all other packaging expenses incidental to placing the goods in the condition in which they are shipped to Brunei Darussalam;

(b) the value, apportioned as appropriate, of the following goods and services where 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 and in accordance with the generally accepted accounting principles, to the extent that such value has not been included in the price actually paid or payable —

- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds and similar items used in the production of the imported goods;
- (iii) materials consumed in the production of the imported goods;
- (iv) engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in Brunei Darussalam and necessary for the production of the imported goods;

(c) royalties and licence fees, including payments for patents, trade marks and copyrights, 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 for export to Brunei Darussalam, exclusive of charges for the right to reproduce the goods in Brunei Darussalam, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) 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;

(e) the costs of transportation including the loading, unloading and handling charges and other incidental charges and expenses associated with the transport of the imported goods to the port or place of importation, and the costs of insurance of the imported goods.

(2) In making adjustments to the price actually paid or payable, the following amounts shall be deducted therefrom, to the extent that each such amount is otherwise included in the price actually paid or payable —

- (i) any reasonable costs, charges or expenses that are incurred for the construction, erection, assembly or maintenance, or technical assistance, undertaken after importation upon the imported goods;
- (ii) any reasonable costs, charges or expenses that are incurred in respect of the transportation or insurance of the imported goods within Brunei Darussalam and any other reasonable associated costs, charges and expenses therewith;

- (iii) any customs duties or other taxes payable in Brunei Darussalam by reason of the importation or sale of the goods:

Provided that the costs, charges or expenses are identified separately from the balance of the price actually paid or payable for the goods.

(3) If, in the opinion of the Controller, no adjustments can be made in accordance with the provisions aforesaid because of lack of sufficient information, the customs value of the goods to be valued shall be deemed indeterminable under the provisions of rule 4.

Rate of exchange to be used in conversion of currency.

13. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that which is published on a weekly basis and issued by the Brunei Association of Banks and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of Brunei Darussalam.

Effective conversion rate.

14. The conversion rate to be used shall be that in effect at the time of importation of the goods into Brunei Darussalam.

Further regulation of rate of exchange.

15. The Controller, with the approval of the Minister, may further regulate the provisions concerning the rate of exchange for the purpose of determining the customs value of goods.

PART III

DETERMINATION OF CUSTOMS VALUE

Custom's officer to determine customs value.

16. (1) A duly appointed officer of customs shall, within 30 days of the date of the Custom declaration, determine the customs value of imported goods for the purposes of calculating import duty to be levied on such goods.

Transitional period for customs value.

17. (1) For three years following the commencement of these Rules, the customs value of goods shall be the nominal value fixed by the Controller under section 9 of the Customs Act.

(2) Thereafter, the customs value shall be the customs value as stipulated in rule 4.

Import duty shortage to be paid in full.

18. Where a conversion of currency is necessary in determining the customs value and the determination causes a shortage in payment of the import duty, the importer shall pay in full amount the import duty shortage.

Excess payment of import duty to be refundable.

19. Subject to rule 13, where the customs value determined causes an excess in payment of the import duties, a refund of the excess amount shall be made to the importer.

Delay of final determination of customs value and withdrawal of goods from customs.

20. If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable.

PART IV

DISPUTE SETTLEMENT AND RIGHTS OF APPEAL

Written objection to be filed with Controller and deposit of security.

21. Where a dispute arises between the importer and the officer of customs responsible for determining the customs value of goods, the importer may file a written objection to the Controller within 30 days of the date of the assessment and by depositing therein a security of an amount equivalent to the import duty due.

Transfer of security.

22. Where the objection is overruled by the Controller, the security shall be transferred and the import duty due shall be deemed paid, and if the objection is allowed such security shall be returned forthwith.

Initial right of appeal.

23. Any person wishing to exercise an initial right of appeal without penalty against the decision of the Controller in relation to the provisions of these Rules may do so in writing to the Minister.

Procedure on appeals.

24. (1) An appeal made under rule 23 shall, within 21 days, be delivered to the Controller with two copies of a written statement addressed to the Minister stating concisely the grounds for the appeal.

(2) Upon receiving such statement, the Controller shall forthwith forward it to the Minister.

(3) As soon as may be reasonable after receiving such statement, the Minister shall give to the appellant and the Controller at least fourteen days notice of the date of hearing the appeal.

Presence at hearing.

25. At the hearing of the appeal by the Minister, the appellant or his duly authorised representative, as also the Controller or an officer of customs duly appointed by him for that purpose, shall be entitled to be present and to be heard.

Onus of proof.

26. The onus of proving that any decision of the Controller, made under the provisions of these Rules, is not justified shall be upon the appellant.

Decisions on appeal.

27. (1) The Minister may confirm, set aside or modify the decision against which the appeal is made.

(2) The decision of the Minister shall be communicated to the Controller, who shall forthwith inform the appellant in writing of that decision and the reasons for it.

(3) Any further right of appeal, without penalty, to any judicial authority to which the importer or any other person liable for the payment of the duty is entitled may be exercised by him and this right shall be explained to him by the Controller.

PART V

MISCELLANEOUS

Confidential information.

28. All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned and shall not be disclosed without the specific permission of the person or government providing such information, except insofar as that its disclosure is required in the context of judicial proceedings.

Right to written explanation of valuation.

29. Upon written request, the importer shall have the right to an explanation in writing from the customs administration of Brunei Darussalam as to how the customs value of the imported goods was determined.

General interpretation.

30. Nothing in these Rules shall be construed as restricting or calling into question the right of customs administration to satisfy itself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

Application of interpretative notes.

31. The interpretative notes contained in the Annex to the Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 may be used as a reference for the purposes of these Rules.

Made this 23rd. day of Muharam, 1422 Hijriah corresponding to the 17th. day of April, 2001.

PENGIRAN DATO PADUKA MAIDIN BIN PENGIRAN HAJI HASHIM
Permanent Secretary
Ministry of Finance