

WORLD TRADE ORGANIZATION

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Committee on Customs Valuation

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT ON CUSTOMS VALUATION

Checklist of Issues

VENEZUELA

The following communication, dated 17 December 2001, has been received from the Permanent Mission of Venezuela.

I have pleasure in enclosing the replies to the checklist of issues circulated in document G/VAL/5.

Checklist of Issues

1. Questions concerning Article 1:

(a) Sales between related persons:

(i) Are sales between related persons subject to special provisions?

There are no special provisions other than the provisions laid down in the Agreement.

(ii) Is the fact of intercompany prices *prima facie* considered as grounds for regarding the respective prices as being influenced?

Not necessarily. Nevertheless, the central customs administration may review or examine the circumstances of sale, in order to satisfy itself as to the accuracy of declarations made by companies, in accordance with Article 17 of the Agreement.

(iii) What is the provision for giving the communication of the above-mentioned grounds in writing if the importer so requests (Article 1.2(a))?

As prescribed in Circular No. INA/DV/00/I-019 dated 31 May 2000, which lays down instructions to be followed by Customs in order to expedite the clearance of goods, pursuant to the new customs valuation rules, in the event that the buyer and the seller are related goods must be cleared, in conformity with Article 13 of the Agreement, and a provisional valuation form must be filled in, with a copy to the importer. The file is forwarded to the regulatory authority, i.e. the Value Division of

the National Customs Department, for review, beginning with a summons to, and a questionnaire to be completed by, the company in question.

(iv) How has Article 1.2(b) been implemented?

Owing to the recent implementation of the new legislation, Article 1.2(b) has not been applied at the operative level (i.e. customs), because importers entitled to avail themselves of this provision have limited knowledge of previously accepted customs values for imports by unrelated buyers. In the event of a transaction between related persons, customs offices, pursuant to Article 13 of the Agreement, delay the final determination of value and refer the case to central level for investigation into the circumstances of the sale and for final determination of the customs value, in accordance with the provisions of Article 1.2(a).

(b) Price of lost or damaged goods:

Are there any special provisions or practical arrangements concerning the valuation of lost or damaged goods?

No. For the purposes of tax responsibility, Article 26 of the Basic Customs Law stipulates that storage companies " ... shall be liable directly to the National Tax Authority for tax due in respect of lost or damaged goods and to the interested parties for the value of said goods".

2. How has the provision of Article 4 to allow the importer an option to reverse the order of application of Articles 5 and 6 been implemented?

There are no precedents in this regard. Nevertheless, we understand that Venezuela has invoked the reservation provided for under point 3 of Annex III to the Agreement, which is taken up in Article 3 of Decision 378 of the Commission of the Cartagena Agreement as a rule common to the Andean Community countries.

3. How has Article 5.2 been implemented?

There are no precedents in this regard.

4. How has Article 6.2 been implemented?

There are no precedents in this regard.

5. Questions concerning Article 7:

(a) What provisions have been made for making value determinations to Article 7?

The relevant instructions are set forth in Circular No. INA/DV/00/I-019. However, formal provisions consistent with the Agreement and Article VII of the GATT are currently being drawn up. In addition, a number of specific criteria have been laid down for consultations with importers, having regard for the provisions of Article 7.

(b) What is the provision for informing the importer of the customs value determined under Article 7?

Article 52 of the Basic Customs Law provides that once the documents have been checked and/or the goods have been physically inspected, in the event of objections by the interested parties the customs official shall draw up a report detailing all the steps taken and explaining the valuation methods applied, including under Article 7. This procedure also complies with Article 16 of the Agreement.

(c) Are the prohibitions found in Article 7.2 delineated?

Not in a formal sense. However, Circular No. INA/DV/00/I-019 stipulates that where customs officials must value goods using the method of last resort and having regard to the prohibitions in Article 7.2, they may apply such information relating to international export prices as is not expressly prohibited by Article 7.2.

6. How have the options found in Article 8.2 been handled? In the case of f.o.b. application, are ex-factory prices accepted?

All costs up to the c.i.f. value, as established in Article 5 of Decision 378 of the Commission of the Cartagena Agreement.

7. Where is the rate of exchange published, as required by Article 9.1?

The Central Bank of Venezuela issues a daily report setting the benchmark rate of exchange.

8. What steps have been taken to ensure confidentiality, as required by Article 10?

Under Decision 378, Andean Community legislation provides for the confidentiality of information.

9. Questions concerning Article 11:

(a) What rights of appeal are open to the importer or any other person?

Administrative and judicial remedies, as provided for in Article 15 of Decision 378 and in conformity with Articles 131 to 141 of the Basic Customs Law.

(b) How is he to be informed of his rights to further appeal?

As stipulated in Article 15 of Decision 378 and in conformity with Articles 131 to 141 of the Basic Customs Law.

10. Provide information on the publication, as required by Article 12, of:

(a) (i) The relevant national laws:

Adoption of Decisions 378 and 379 through Decree No. 655, published in Official Gazette Extraordinary No. 5.436 of 4 February 2000.

Adoption of the Andean Customs Value Declaration form through Finance Ministry Resolution No. 668 (published in Official Gazette Extraordinary No.

37.100 of 15 December 2000), in order to facilitate the declaration of particulars relating to customs value.

(ii) the regulations concerning the application of the Agreement:

Draft Regulations of the Basic Customs Law regarding customs value of goods are awaiting enactment and publication.

(iii) the judicial decision and administrative rulings of general application relating to the Agreement:

In order to facilitate implementation of the Agreement, Customs have been issued with instructions through internal circulars; these have also been provided to importers, customs brokers, chambers of commerce and industry, and industry and trade associations.

(iv) general or specific laws being referred to in the rules of implementation or application:

Customs matters are specifically governed by the Basic Customs Law, which refers to the Regulations for all questions pertaining to customs value. As mentioned under (ii) above, these Regulations have not yet been published.

(b) Is the publication of further rules anticipated? Which topics would they cover?

See reply to (a) (ii) above.

11. Questions concerning Article 13:

(a) How is the obligation of Article 13 (last sentence) being dealt with in the respective legislation?

In accordance with Article 12 of Decision 378 and the instructions set forth in Circular No. INA/DV//I-019.

(b) Have additional explanations been laid down?

The instructions set forth in Circular No. INA/DV//I-019 provide for valuation to be delayed with or without provision of a surety.

12. Questions concerning Article 16:

(a) Does the respective national legislation contain a provision requiring customs authorities to give an explanation in writing as to how the customs value was determined?

Not in a formal sense. However, administrative acts are regulated by the Basic Law on Administrative Procedures, which may be applied on a supplementary basis and which stipulates that a reasoned response shall be given for any action taken on administrative grounds.

(b) Are there any further regulations concerning the above-mentioned request?

Although the Basic Law on Administrative Procedures is not special legislation, it provides that all decisions by the authorities shall be communicated in writing to whoever is affected by such decisions.

13. How have the Interpretative Notes of the Agreement been included?

The Interpretative Notes form part of the Agreement, as stated in its Article 14, and have been published, through Decree No. 655 of 23 January 2000, in Official Gazette Extraordinary No. 5.436 of 4 February 2000 of the Bolivarian Republic of Venezuela. The draft Regulations of the Basic Customs Law relating to customs value of goods, which have not yet been enacted, should incorporate these Interpretative Notes.

14. How have the provisions of the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods been implemented?

In accordance with Article 7 of Decision 378 of the Commission of the Cartagena Agreement.

15. For those countries applying paragraph 2 of the Decision on the Valuation of Carrier Media Bearing Software for Data-Processing Equipment, how have the provisions of this paragraph been implemented?

Venezuela has not adopted the Decision on the Valuation of Carrier Media Bearing Software.
