

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/1/Add.10*

5 June 1981

Special Distribution

Committee on Customs Valuation

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Legislation of Austria

* English only. The original text in German has been submitted to the Secretariat (Non-Tariff Measures Division) where it can be consulted.

Federal Law of 8th May 1980 on the Value of Goods for Customs
Purposes

(Customs Valuation Act, 1980)

The National Council has decreed:

Section 1

Definitions

(1) For the purposes of this Federal Act:

1. "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall be disregarded.
2. "similar goods" means goods which, although not alike in all respects, have such characteristics and component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.
3. "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.

(2) Goods shall not be regarded as identical goods or similar goods unless they were produced in the same country as the goods being valued.

(3) Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

(4) For the purposes of this Federal Act, persons shall be deemed to be related only if:

1. they are officers or directors of one another's business;
2. both of them are legally recognized partners in business;
3. they are employer and employee;
4. any person directly or indirectly owns, controls or holds at least 5 per cent of the 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 members of the same family within the meaning of Section 25 of the Federal Law on Taxation,
Austrian Federal Legal Gazette No. 194/1961.

(5) For the purposes of this Federal Act the term "persons" comprises natural persons as well as legal persons and partnerships which have no separate legal entity.

Section 2
Customs Value

- (1) The duty of Customs chargeable on goods which under the detailed provisions of the Customs tariff are liable to an ad valorem Customs duty shall be assessed on their customs value.
- (2) The customs value shall be the transaction value of the goods being valued under the provisions of Section 3.
- (3) If the customs value cannot be determined under the provisions of Section 3, the customs value shall be determined by proceeding sequentially through Sections 4 to 7. At the request of the person from whom the duty is due the order of application of Articles 6 and 7 shall be reversed.
- (4) If the customs value cannot be determined under the provisions of Sections 3 to 7, inclusive, the customs value shall be assessed in accordance with the provisions of Section 8.
- (5) If the term "customs value" is used in other legal provisions, this term shall be interpreted in accordance with this Federal Act.

Section 3

Transaction Value

- (1) The transaction value of the goods being valued shall be the price actually paid or payable on a sale for export to the customs territory adjusted, as necessary, in accordance with the provisions of Section 9.
- (2) The transaction value referred to in paragraph 1 shall be accepted as the customs value, provided:
 1. that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which;
 - a) are based on legal provisions, or
 - b) limit the geographical area in which the goods may be resold, or
 - c) do not affect the value of the goods;
 2. that this sale is not subject to some condition or consideration whose effects on the price of the goods being valued cannot be determined;
 3. that no part of the proceeds of any subsequent resale, disposal or use of the goods will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Section 9; and
 4. that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value of the goods being valued is acceptable as the customs value under the provisions of paragraphs 3 and 4 of this Section.
- (3) Where the buyer and seller are related, the transaction value shall be accepted provided that the relationship did not influence the price.

- (4) In a sale between related persons this value shall also be accepted whenever the person from whom the duty is due demonstrates that the declared value of the goods being valued corresponds to one of the following values ascertained at or about the same time taking account of price fluctuations normal in the branch of trade concerned:
1. the transaction value of imported identical or similar goods in sales to unrelated buyers;
 2. the customs value of identical or similar goods as determined under the provisions of Section 6;
 3. the customs value of identical or similar goods as determined under the provisions of Section 7.
- (5) In applying the tests according to paragraph 4 due account shall be taken of differences in commercial levels, quantity levels, the adjustments in accordance with the provisions of Section 9 and costs incurred by the seller in sales in which he and the buyer are not related.

Section 4

Identical Goods

- (1) Subject to the provisions of paragraph 2 the customs value shall be 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, which are sold for export to the Customs territory and imported at or about the same time as the goods being valued.
- (2) The transaction value of identical goods may be accepted as the customs value only if this transaction value - adjusted if necessary in accordance with paragraph 3 and Section 9, paragraph 1, item 2 - has already been accepted as the customs value under Section 3.
- (3) Where no sale at the same commercial level and in substantially the same quantity is found, use shall be made of the transaction value of identical goods in a sale where the commercial level and the quantity or one of these two elements are different; this value shall be adjusted to take account of the differences in these elements.
- (4) Where the costs and charges referred to in Section 9, paragraph 1, item 2 are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances or modes of transport.
- (5) If several identical goods at different transaction values are found, the lowest such value shall be used to determine the customs value of the goods being valued.

Section 5.

Similar Goods

- (1) The customs value shall be 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, which are sold for export to the Customs territory and imported at or about the same time as the goods being valued.
- (2) The provisions of Section 4, paragraphs 2 to 5 shall be applied also in respect of similar goods.

Section 6

Deductive Valuation Method

- (1) If the goods being valued or identical or similar imported goods are resold in the Customs territory in the condition as imported at or about the time at which the declaration for the determination of the customs value is presented, the determination of the customs value shall be based on the unit price at which the goods referred to are resold in the greatest aggregate quantity to persons who are not related to the seller in the Customs territory, subject to deductions for the following:
1. either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connexion with sales in the Customs territory of imported goods of the same class or kind;
 2. the usual costs of transport and insurance and associated costs incurred within the Customs territory;
 3. loading, reloading and unloading charges incurred within the Customs territory;
 4. the customs duties and other import duties and taxes levied on the importation into the Customs territory.
- (2) The provisions of paragraph 1 shall be applied also where the goods referred to in this provisions are resold in the condition as imported in the Customs territory at a later date, but in any case, before the expiration of three months.
- (3) If neither the goods being valued nor identical or similar imported goods are resold in the Customs territory in the condition as imported, then, if the person from whom the duty is due so requests, the customs value shall be based on the unit price at which the goods being valued, after further processing, are resold in the greatest aggregate quantity to persons who are not related to the seller in the Customs territory. In this determination due allowance shall be made for the value added by the processing and the deductions provided for in paragraph 1, items 1 to 4.

Section 7

Computed Value

- (1) The customs value shall be a computed value consisting of the sum of:
1. the cost or value of materials and fabrication or other processing employed in producing the goods being valued;
 2. an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind which are made by producers in the country of exportation for export to the Customs territory;
 3. the cost or value of all other expenses defined in Section 9, paragraph 1, item 2.
- (2) (Constitutional provision) Information supplied by the producer of the goods for the purpose of determining the computed value may be verified abroad by Austrian Customs officials with the agreement of the producer and, provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Section 8

Assessment

- (1) Where the customs value is assessed in accordance with the provisions of Section 184 of the Federal Law on Taxation, the methods of valuation laid down in Sections 3 to 7, inclusive, shall be employed to the greatest extent possible.
- (2) No customs value shall be assessed under the provisions of paragraph 1 on the basis of:
1. the price of the goods for export to a third country;
 2. the price of goods on the domestic market of the country of exportation;
 3. the selling price of goods produced in the Customs territory;
 4. minimum customs values;
 5. arbitrary or fictitious values;
 6. the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 7;
 7. a system which provides for the acceptance for customs purposes of the higher of two alternative values.

Section 9

Costs and Services

(1) To the transaction value under the provisions of Section 3 there shall be added, to the extent that they are not included in this value:

1. the following costs, charges and expenses incidental to the sale:
 - a) commissions and brokerage, except buying commissions,
 - b) the cost of containers, excluding those which are to be cleared separately from the goods, as separate articles for tariff purposes,
 - c) the cost of packing whether for labour or materials;
2. the following costs, charges and expenses incidental to delivery up to the crossing of the Customs frontier:
 - a) the cost of transport and associated charges
 - b) loading, reloading and unloading charges,
 - c) the cost of insurance;
3. the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced price or at a reduced consideration for use in connexion with the production and the sale of the goods being valued:
 - a) materials, components, parts and similar items incorporated in the goods being valued,
 - b) tools, dies, moulds and similar items used in the production of the goods being valued,
 - c) materials consumed in the production of the goods being valued,
 - d) engineering, development, artwork, design work and plans and sketches undertaken outside the Customs territory and necessary for the production of the goods being valued;

4. royalties and licence fees that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, excluding however charges for the right to reproduce the goods in the Customs territory;

5. the value of any part of the proceeds of any subsequent resale, disposal or use of the goods being valued that accrues directly or indirectly to the seller.

- (2) The costs, charges and expenses of consigning together several different goods classified separately shall be allocated in proportion to the value of the various goods. The same allocation shall be made in respect of the cost of containers in which different goods classified separately are imported together, insofar as such containers are not cleared separately from the goods, as separate articles for tariff purposes.

Section 10

Currency Conversion

If expressed in a foreign currency, statements of price or value to be used as a basis for the determination of customs value shall be converted into shillings at the rate determined by the Minister of Finance, in accordance with the prevailing official rates in Austria for foreign currencies, at the time when the declaration for the determination of customs value is presented.

Section 11

Declaration for the determination of customs value

- (1) For the determination of customs value a declaration shall be presented. This declaration for the determination of customs value shall be presented jointly with the Goods declaration to be presented under the Customs legislation for the clearance of goods for home use including cases of consolidated Goods declarations and final discharge for temporary admission. Insofar as it is necessary for the simplification of the final discharge, the special certificate for a temporary fictitious warehousing procedure shall provide that all or certain data necessary for the determination of customs value shall already be provided in the Goods declaration for clearance for temporary admission. In such a case the data given in the Goods declaration need not be repeated in the declaration for the determination of customs value on the occasion of final discharge of the goods from warehousing.
- (2) The declaration for the determination of customs value shall be presented in writing. In cases where under the Customs legislation the Goods declaration may be made orally, an oral declaration for the determination of customs value may also be made. If however the data given are not satisfactory, or there are doubts about their correctness, the customs office shall require a written declaration for the determination of customs value.
- (3) The declaration for the determination of customs value shall be presented by the buyer in the Customs territory or, if there is no sale, by the consignee.
- (4) If the Railways act as the person entitled to dispose of the goods and if the goods are presented for clearance before arrival at the place of destination in the absence of a written authorisation or the documentary evidence necessary for the determination of customs value, the import charges shall be assessed provisionally on the basis of the declaration for the determination of customs value submitted by the Railways. The consignee named in the written Goods

declaration or, in the case of an oral Goods declaration, named in the Customs certificate of clearance shall upon request by the Customs office submit a declaration for the determination of customs value for the purpose of the definitive assessment of import charges.

- (5) The declaration for the determination of customs value shall include all data necessary for the determination of customs value in accordance with the provisions of this Federal law. Unless otherwise stated in this law the provisions on the Goods declaration under the customs legislation shall apply as appropriate with respect to the declaration for the determination of customs value.
- (6) If it is found at a later stage that goods are liable to an ad valorem customs duty, the buyer or the consignee as the case may be shall upon request of the Customs office subsequently submit a declaration for the determination of customs value.

Section 12

Final Provisions

- (1) This Federal Act enters into force on January 1, 1981.
- (2) On this date the Federal Law of 30th March 1955 on the payment of ad valorem Customs duties (Customs Valuation Act 1955), Austrian Federal Legal Gazette No. 60, expires.
- (3) In so far as other Federal legal provisions refer to the Customs Valuation Act 1955, the corresponding provisions of this Federal Act are substituted.
- (4) Regulations on the basis of this Federal Act may be issued already from the day following its publication; at the earliest however they enter into force simultaneously with the entering into force of this Federal Act.
- (5) The Federal Minister of Finance shall be responsible for the enforcement of this Federal Act.