

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Customs Valuation

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Checklist of Issues

Addendum

SOUTH AFRICA

At its meeting held on 5 May 1981, the Committee on Customs Valuation decided, inter alia, that Parties should reply in writing to the points contained in the revised checklist of issues relating to national legislation on customs valuation (VAL/2/Rev.1).

The reply submitted by the delegation of South Africa is reproduced hereunder.

CHECKLIST OF ISSUES

REPLY BY SOUTH AFRICA

- A. As required by Article 25 of the "Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade" the South African legislation on customs valuation and administrative procedures are consistent with the provisions of the Agreement.
- B. The provisions of the Agreement were incorporated in Chapter IX of the Customs and Excise Act, No. 91 of 1964, as amended, hereinafter referred to as the "Act", by the publication of the Customs and Excise Amendment Act, 1982 (Act No. 86 of 1982) in the Government Gazette.

1. Questions concerning Article 1:

(a) Sales between related persons:

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

Related persons are defined in Section 66(2)(a) of the Act. A foreign supplier's relationship with his sole agent, sole distributor or sole concessionary in South Africa is dealt with in Section 66(2)(b).

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

No. Section 66(3) of the Act clearly specifies that the fact that a buyer and a seller are related within the meaning of Section 66(2)(a) shall not in itself be a ground for not accepting the transaction value.

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

Although this provision has not been provided for specifically in the Customs and Excise Act the whole Agreement has been given legal status in Section 74A(1) of the Act where it is clearly stated that "the interpretation of Sections 65, 66 and 67 shall be subject to the agreement concluded at Geneva on 12 April 1979 and known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, the Interpretative Notes thereto ..."

The relevant sections of the Act as well as the Agreement are incorporated in the "Guide to Customs Valuation in the Republic of South Africa" of which copies are freely available to all importers. It is in any case common practice in this Administration to accede to requests of this nature.

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

Sections 66(3)(b)(i), (ii) and (iii) of the Act provide for the use of the "test values" provided for in Article 1.2(b).

- (b) Price of lost or damaged goods:

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

The treatment of lost or damaged goods is not dealt with in the valuation legislation but is provided for in Section 44(1) of the Act, dealing with the "liability for duty", read with Regulation 3.06.07 in terms of which only the value of the goods actually imported may be declared in certain circumstances. Moreover a refund of duty is specifically provided for in Section 76(2)(d) of the Act in respect of damaged 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?

Section 66(6) of the Act provides for the importer to exercise this option.

3. How has Article 5.2 been implemented?

This Article is provided for in Section 66(7)(b) & (c) of the Act.

4. How has Article 6.2 been implemented?

See answer to Question 1(a)(iii). Specific provision for this Article was not regarded necessary as it is accepted in South African law that the customs authorities in this country have no jurisdiction over an exporter in a foreign country.

5. Questions concerning Article 7:

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

Articles 7.1 and 7.2 is provided for in Section 66(9) of the Act. Section 65(4)(a) authorises the Commissioner to determine customs values.

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

The obligation to inform the importer is provided for in Regulation 9.06.02 but as the determination is normally given in close consultation with the importer this will very seldom be necessary.

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

Yes, in Section 66(9) of the Act.

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

South Africa has decided to retain the F.O.B. system of valuation as reflected in Section 67(2)(a) of the Act. In the case of ex-factory prices, such prices are accepted as the basis for transaction value.

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

Rates of exchange are published in a weekly circular freely available to importers and Customs clearing agents/brokers and also posted in customs offices. The rates which are circulated are governed by Regulations 9.01.01 to 9.01.03.02.

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

The requirement of confidentiality is prescribed in Section 4(3) of the Act which is a general provision applicable to all customs matters.

9. Questions concerning Article 11:

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

Sections 65(4)(a) and 65(6)(a) provide for an appeal to the Supreme Court of South Africa against value determinations.

In terms of Section 65(5) read with Section 3(2) however the Commissioner may amend or withdraw a determination issued by an officer. This will happen in the case of a successful internal appeal by an importer. Section 96(1) also provides for a notice to institute legal proceedings which in itself is a further opportunity to the Commissioner to re-consider any determination made, before the action is brought to court.

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

The Act has been published in the Government Gazette and the Sections dealing with customs valuation are also incorporated in the "Guide to Customs Valuation in the Republic of South Africa" which is freely available to all importers and other interested parties. It is however administrative practice to advise an importer who has a dispute with Customs of his right of appeal.

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

- (a) (i) the relevant Customs laws;
- (ii) the regulations concerning the application of the Agreement.

In South Africa all Acts of Parliament as well as Regulations are published by the Government Printer in the Government Gazette which publication may be purchased from the Government Printer. In South African law publication of legislation in the Government Gazette is regarded as proper notification to the subject and binds him from the effective date.

- (iii) the judicial decisions and administrative rulings of general application relating to the Agreement

Judicial decisions are published in the South African Law Reports. Administrative rulings of general application will be made known by way of circulars and will also be published in the "Guide to Customs Valuation in the Republic of South Africa" by the issuance of additional pages.

- (iv) general or specific Laws being referred to in the rules of implementation or application

See answers to 10(a)(i) and 10(a)(ii) above, please.

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

No further rules are anticipated at this stage.

11. Questions concerning Article 13:

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

Section 107(2)(a) of the Act provides for release of goods from Customs control on lodgement of suitable security.

- (b) Have additional explanations been laid down?

No.

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?

Yes, in Regulation 9.06.02.

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

No. Please see answer to 5(b).

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

The most significant Interpretative Notes have been incorporated in the Customs and Excise Act and others of a more general nature have been given legal status in Section 74A(1) of the said Act.