

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

Legislation of Mexico

Revision¹

The following communication, dated 2 October 1992, has been received from the Permanent Mission of Mexico.

The Government of Mexico has instructed me to advise the Committee members of recent legislative amendments to various provisions of the Customs Law, in accordance with the Decree published in the Diario Oficial de la Federación dated 20 July 1992. These reforms entered into force on 1 September 1992.

The amendments of interest to the Committee concern Articles 48 to 59 of the above Law, and refer specifically to customs valuation procedures (see Annex).

As you will see, these valuation procedures are the same as those in the Customs Valuation Code.

This notification is made in accordance with the provisions of Article 25 of the Code, without prejudice to Mexico's rights under Article 21 of the Code.

* English only

¹ This revision contains the English translation of the document VAL/1/Add.25/Suppl.1.

Article 48 The tax base of the General Import Tax shall be the customs value of the goods.

The customs value of the goods shall be their transaction value, except as provided for in Article 54 of this Law.

The transaction value of goods to be imported shall be the price paid for the goods, provided that the conditions referred to in Article 51 of this Law have been met and that the goods have been sold to the importer for export to the national territory; where applicable, the price shall be adjusted in accordance with the provisions of Article 49 below.

The price paid means the total amount paid or to be paid by the importer to the seller or on his behalf for the imported goods.

Article 49 The transaction value of imported goods shall include the following costs in addition to the price paid:

I. The following, to the extent that they are incurred by the importer and are not included in the price paid for the goods:

- (a) commissions and brokerage, except buying commissions;
- (b) the cost of containers which are treated as being one for customs purposes with the goods in question;
- (c) the cost of packing whether for labour or materials;
- (d) charges for loading and unloading the goods, as well as the cost of freight or insurance paid abroad up to the export destination.

II. The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the importer free of charge or at 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 included in the price paid:

- (a) materials, components, parts and similar items incorporated in the imported goods;
- (b) tools, dies, moulds and similar items used in the production of the imported goods;
- (c) materials consumed in the production of the imported goods;
- (d) engineering, development, artwork, design work, and plans undertaken outside the national territory and necessary for the production of the imported goods.

III. Royalties and licence fees related to the goods being valued that the importer must pay, either directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price paid.

IV. 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.

For the purpose of determining the transaction value of the goods, the price paid shall be increased in accordance with this Article on the basis of objective and quantifiable data.

Article 50 The transaction value of the imported goods shall not take into account the following, provided that they are not included in or are separate from the price paid:

I. Costs paid by the importer on his own behalf even when they are deemed to benefit the seller, except those in respect of which an adjustment must be made in accordance with the provisions of Article 49 of this Law.

II. The following costs, provided that they are separate from the price paid, for the imported goods:

- (a) charges for construction, installation, erection, assembly, maintenance or technical assistance undertaken after importation on imported goods;
- (b) the cost of transport and insurance after importation;
- (c) taxes on foreign trade and any other taxes payable in the national territory as a result of the importation or disposal of the goods.

III. Payments by the importer to the seller in the form of dividends or other payments which are not directly related to the imported goods.

For the purposes of this Article, the amounts are deemed to be separate from the price paid when they are mentioned, listed or specified separately from the price paid in the invoice or other commercial documents.

Article 51 For the purposes of the provisions of Article 48 of this Law, the customs value shall be the transaction value, provided:

I. That there are no restrictions as to the disposition or use of the goods by the importer other than restrictions which:

- (a) are imposed or required by the legal provisions in force in the national territory;
- (b) limit the geographical area in which the goods may be resold, or;
- (c) do not affect the value of the goods.

II. That the sale for export to the national territory or the price of the goods is not subject to some condition or consideration for which a value cannot be determined with respect to the goods.

III. That no part of the proceeds of any subsequent resale, disposal or use of the goods by the importer will accrue directly or indirectly to the seller, except for the amount of the adjustment referred to in Article 49, paragraph IV, of this Law.

IV. That the buyer and seller are not related, or where the buyer and seller are related, this has not affected the transaction value.

If none of the above-mentioned cases apply, the tax base of the General Import Tax shall be determined in accordance with the provisions of Article 51 of this Law.

Article 52 For the purposes of this Law, persons shall be deemed to be related if:

I. They are officers or directors of one another's businesses.

II. They are legally recognized partners in business.

III. They are employer and employee.

IV. Any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding stock, shares or securities, with voting rights, of both of them.

V. One of them directly or indirectly controls the other.

VI. Both of them are directly or indirectly controlled by a third party.

VII. Together they directly or indirectly control a third party.

VIII. They are members of the same family.

Article 53 In a sale between related persons the relationship shall not be deemed to have influenced the transaction value if the importer can show that the said value varied by a maximum of 3 per cent in respect of any of the following test values occurring at or about the same time and that the declaration referred to in Article 59 of this Law stated that there was a relationship with the seller of the goods and that it had not affected the price:

I. The transaction value in sales of identical or similar goods to unrelated importers for export to the national territory.

II. The customs value of identical or similar goods as determined under the provisions of Article 55-B of this Law.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 49 of this Law and costs incurred by the seller in sales in which he and the importer are not related that are not incurred by the seller in sales in which he and the importer are related.

Article 54 If the tax base of the import tax cannot be determined in accordance with the transaction value of the imported goods as provided for in Article 48 of this Law, or does not derive from a sale for export to the national territory, it shall be determined in conformity with the following procedure to be applied in the order set out below and on the basis of elimination:

I. Transaction value of identical goods, in accordance with Article 55 of this Law.

II. Transaction value of similar goods, determined in accordance with Article 55-A of this Law.

III. Value of the unit selling price determined in accordance with Article 55-B of this Law.

IV. Value determined in accordance with Article 55-E of this Law.

Article 55 The value referred to in paragraph I of the preceding Article shall be the transaction value of goods identical to the goods being valued if the said goods have been sold for export to the national territory and imported at or about the same time at the same commercial level and in substantially the same quantity as the goods being valued.

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

If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used.

Identical goods means goods produced in the same country as the goods being valued and which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition given in this paragraph from being regarded as identical.

The value of identical imported goods whose value has been modified by the importer or the authorities shall not be taken into account except where such modifications are also included.

Article 55-A The value referred to in paragraph II of Article 54 of this Law shall be the transaction value of goods similar to the goods being valued if the said goods have been sold for export to the national territory and imported at or about the same time, at the same commercial level and in substantially the same quantity as the goods being valued.

Where no such sale is found, the transaction value of similar goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used.

Similar goods means goods produced in the same country as the goods being valued and which, although they are not alike, have like characteristics and like 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.

The value of similar imported goods whose value has been modified by the importer or the authorities shall not be taken into account except where such modifications are also included.

Article 55-B The unit selling price is determined as follows:

I. If the imported goods or identical or similar imported goods to be valued are sold on the national territory in the condition as imported, the value of the imported goods under the provisions of this Article 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 import such goods, subject to the deductions provided for in Article 55-D of this Law.

II. If neither the imported goods nor identical nor similar imported goods are sold in the country in the condition as imported, the 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 the national territory who are not related to the persons who are selling the goods, due allowance being made for the value added by such processing and the deductions provided for in Article 55-D of this Law, provided that such sale takes place within ninety days from the date of importation.

Any sale on the national territory where the buyer has directly or indirectly supplied free of charge or at reduced cost any of the elements mentioned in paragraph II of Article 49 of this Law, for use in the production of imported goods or the sale of the goods for export, shall not be taken into account.

Article 55-C For the purposes of Articles 53, 55, 55-A and 55-B, the term "about the same time" means a period not exceeding ninety days prior or subsequent to import of the goods being valued.

Article 55-D For the purposes of Article 55-B of this Law, deductions shall be made for the following:

I. The commissions usually paid or agreed to be paid or the additions usually made for profit and general direct or indirect expenses in connexion with sales in the national territory of imported goods of the same class or kind.

II. The usual costs of transport, insurance and associated costs incurred subsequent to export, for example, loading, unloading, handling and storage not deemed to be general costs in accordance with the preceding paragraph.

III. Taxes on foreign trade and other taxes payable in the national territory for the importation or sale of goods.

Article 55-E Where the value of the imported goods cannot be determined in accordance with the provisions of Article 48 and Article 54, paragraphs I, II and III, of this Law, the value shall be determined by successively applying the provisions set out in those Articles, proceeding sequentially and by elimination, with considerable flexibility, in conformity with reasonable criteria compatible with legal principles and provisions, on the basis of the data available in the national territory.

Article 56 The tax base of the general export tax is the commercial value of the goods at the place of sale, and it shall be mentioned on the invoice, without including freight and insurance costs.

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Article 57 General import and export taxes shall be determined by applying to the tax base specified in Chapter III, Sections I and II, of this Part, respectively, the relevant rate according to the customs nomenclature.

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Article 58 For import or export, payment may be made at a date prior to that provided for in Article 38 of this Law. The tax rates, tax base, currency exchange rates, non-tariff restrictions or regulations and prohibitions applicable shall be those prevailing on the date of payment only when the goods are presented to customs and the random selection

mechanism has been implemented within three days following payment. In the case of imports and exports by rail, the time-limit shall be twenty days.

Payment shall be made at authorized offices and does not exempt the importer or exporter from fulfilling obligations derived from non-tariff restrictions or regulations.

Article 59

II. The customs value of the goods, as well as the valuation method used and, where appropriate, the existence of the relationships referred to in Article 52 of this Law in the case of importation, or the commercial value in the case of exportation.