

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

AUSTRALIA

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 Australia is reproduced hereunder.

As required by Article 25 of the Agreement, Australian legislation and administrative procedures are consistent with the provisions of the Agreement.

2. The provisions of the Agreement are given effect in Australian legislation by the Customs (Valuations) Amendment Act 1981 which came into operation on 30 November 1981. A copy of that Act is attached.

3. Relevant administrative procedures are set out in the Australian Customs Valuation Guide, a copy of which has been submitted to the Technical Committee on Customs Valuation, Customs Cooperation Council.

4. Also attached is a response to the check list of issues relating to national legislation contained in Doc VAL/2/Rev 1 of 11 May 1981. References in that paper to sections, sub-sections, paragraphs or sub-paragraphs are references to sections, sub-sections, paragraphs or sub-paragraphs of the Customs Act 1901 as amended by the Customs (Valuations) Amendment Act 1981. For the purposes of the Customs Act 1901 "owner" is defined in section 4 of that Act as:

"Owner in respect of goods includes any person (other than an officer of customs) being or holding himself out to be the owner, importer, exporter, consignee, agent or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods."

RESPONSE TO CHECK LIST OF ISSUES

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 sub-section 154(4) and, for the purposes of Article 1, sub-sections 158(5) and 158(6) deal with situations where the vendor and purchaser are related persons.

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

No. Paragraph 158(5)(b) requires that a Senior Customs Official may only question the transaction value on these grounds if he considers that the relationship may have influenced the price.

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

Paragraphs 158(5)(c) and 158(5)(d) require written advice to the owner of the goods, which includes the importer, and provide an opportunity for the owner to respond.

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

Paragraph 158(6)(b) provides for the use of the "test values".

- (b) Price of lost or damaged goods:

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

Paragraph 154(2)(a)(i) provides that no account shall be taken of any rebate or other decrease in the price of imported goods which has not accrued when the price is ascertained by Customs. However, should such a rebate or other decrease in the price accrue within 12 months of the date on which duty was paid, other provisions of the Customs Act may authorise payment of an appropriate refund of the duty paid.

Other provisions for refund or remission of duty may apply when goods are lost or damaged and no price variation is made between buyer and seller.

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?

Sub-section 157(10) provides for the owner of the goods to exercise this option at any time before duty is paid on the goods.

3. How has Article 5.2 been implemented?

Sub-section 161(4) deals with the determination of a unit price by the deductive method in the circumstances set out in Article 5.2. Sub-section 161(6) describes the sale to be taken into account and sub-section 161(7) provides for the deductions to be made. Sub-section 161(5) provides for this valuation method to be used only at the request of the owner of the goods.

4. How has Article 6.2 been implemented?

Article 6.2 deals with matters of comity which Australia believes should be the practice in international relations without legislative expression.

5. Questions concerning Article 7:

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

Section 157 provides that the transaction value is to be the customs value of goods and sets out the sequence of valuation methods to be used.

If the customs value can only be determined by reference to Article 7, sub-section 157(8) provides for such a determination. The manner in which this is done in particular circumstances is dealt with by administrative guidelines which reflect the intent of Interpretative Note 2 to Article 7.

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

Section 161C gives effect to the obligations arising from Article 7.3 and Article 16.

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

Yes, in sub-section 157(9).

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?

Transportation and associated costs specified in Article 8.2 have been handled as follows:

- (a) for the purposes of transaction value - by deducting, as appropriate and in terms of sub-section 154(2), overseas freight and overseas insurance from the price and by taking into account so much of the inland freight and inland insurance as is required by paragraph 159(3)(g).
- (b) for the purposes of deductive value - by deducting overseas freight and overseas insurance, provided in paragraph 161(7)(a); and
- (c) for the purposes of computed value - by adding inland freight and inland insurance, that is usually payable as provided in paragraph 161A(3)(f).

Overseas freight, overseas insurance, inland freight and inland insurance are defined in sub-section 154(1). Paragraph 159(3)(g) allows acceptance of ex-factory prices where the arrangements between the purchaser and the seller so provide.

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

Rates of exchange are published in a weekly bulletin freely available to importers and posted in customs premises. Details of rates which change more frequently are also posted in customs premises.

Rate changes are also input daily to the customs computer system for automatic entry preparation by importers or their agents.

Legislation which gives effect to Article 9.2 is expressed in Section 161B.

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

Sub-section 161C(3) restrains the supply of confidential valuation information.

9. Questions concerning Article 11:

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

This administration maintains an internal review mechanism for considering appeals. Section 161D also provides for review of determinations and other decisions. In addition, section 167 of the Customs Act, provides an owner of the goods with a right of appeal

(i) to a court; or

(ii) by virtue of the Administrative Appeals Tribunal Act 1975, to that Tribunal, in terms of Section 273GA.

The Ombudsman Act 1976 also provides for allegations of mal-administration to be investigated by the Ombudsman.

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

Rights of appeal have been notified by general customs bulletins and the situation in respect of valuation is set out in an administrative instruction which is in the course of issue to the public.

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

(a) (i) the relevant national Laws.

Acts of the Australian Parliament are public documents and may be purchased from the Australian Government Publishing Service. Availability of amendments to customs legislation is also advised by public notice.

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

No customs valuation regulations have been made and none are contemplated at this stage.

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

Judicial rulings are published by the relevant judicial body and are publicly available. Where a ruling enunciates principles having general application these are embodied in administrative guidelines which are incorporated in the Australian Customs Valuation Guide. The Guide is available to the public free of charge and amendments are advised by public notice.

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

See answer to 10(a)(i) above.

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

No further legislation is contemplated at this stage. Administrative material will be issued as the need arises.

11. Questions concerning Article 13:

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

Section 42 of the Customs Act is a provision of long standing and provides for such circumstances.

(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 section 161C.

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

In cases of appeal, Administrative Appeals Tribunal Act imposes a requirement for formal statements on findings on material questions of fact and reasons for decisions.

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

Consistent with Australian legislative drafting practice, Interpretative Notes bearing directly on the determination of customs values have been incorporated in the legislation. Examples of these are:

paragraphs 154(2)(a)(ii) and 154(2)(b)(iii)
sub-section 154(5)

paragraph 159(3)(a) - definition of buying
commission

sub-sections 159(3), (5), (6) and (7)

Section 160, paragraphs 161(2)(b), (c) and (d),
161(3)(b), (c) and (d) and 161A(3)(d).

Other Interpretative Notes have been included in administrative material.