
Committee on Customs Valuation

Original: Spanish

**NOTIFICATIONS UNDER ARTICLE 22.2 OF THE AGREEMENT ON
IMPLEMENTATION OF ARTICLE VII OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE 1994**

PANAMA

Following a decision by the Committee on Customs Valuation at its meeting of 13 November, the following communication from the Permanent Mission of Panama, dated 1 September 1998, is being reissued entirely translated into English. The Spanish and French versions remain the same.

Pursuant to the Decision adopted by the Committee on Customs Valuation on 12 May 1995, I have the honour to notify Panama's legislation on customs valuation to the Committee on Customs Valuation.

1. Cabinet Decree No. 26 of 1 August 1996, published in *Gaceta Oficial* (Official Journal) No. 23,096 of 7 August 1996, which entered into force on 1 January 1997.

"Prescribing provisions concerning the customs regime in relation to customs valuation by the Customs Service."

2. Decision No. 704-04-017 of 10 January 1997, which entered into force upon publication in *Gaceta Oficial* No. 23,267 of 16 April 1997.

"Clearance procedure. Establishment of a procedure for declarations of customs clearance for domestic use in customs services in the eastern zone and others to be incorporated in the future, subject to written communication by the Director-General of Customs."

3. Decision No. 704-04-019 of 10 January 1997, which entered into force upon publication in *Gaceta Oficial* No. 23,348 of 5 August 1997.

"Pursuant to the legal powers conferred upon him, the Director-General of Customs provides that, for customs purposes, automobiles that meet the following requirements are deemed to be used automobiles."

4. Decision No. 704-04-528 of 1 October 1997, which came into force upon publication in *Gaceta Oficial* No. 23,405 of 23 October 1997.

"Entrusting the Ministry of Finance and the Treasury with carrying out a modernization and decentralization programme in order to reorganize and simplify customs procedures."

¹This document cancels and replaces in English only the document dated 8 October 1998.

5. Decision No. 704-04-532 of 17 September 1997, which entered into force upon publication in *Gaceta Oficial* No. 23,402 of 20 October 1997.

"Modernization and administrative decentralization for the purpose of simplifying customs procedures."

GACETA OFICIAL, Wednesday 7 August 1996

GACETA OFICIAL
ORGAN OF THE STATE

Established by Cabinet Decree No. 10 of 11 November 1903

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CABINET COUNCIL
CABINET DECREE No. 26
(of 1 August 1996)

Prescribing provisions concerning the customs regime in relation to customs valuation by the Customs Service.

THE CABINET COUNCIL

WHEREAS:

The country requires a valuation system in keeping with the development of world trade which enables it to give the same treatment to foreign imports as is granted to its exports by its principal trading partners.

It is the responsibility of the Cabinet Council to develop provisions concerning the customs regime, in accordance with Article 153.11 of the Constitution and the principles established by Law No. 41 of 1996.

Like most of its trading partners, the Republic of Panama has applied for membership of the World Trade Organization and has decided to adopt the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, which any country in the world may apply.

The Executive Authority is empowered to take the necessary measures to develop the country's economic policy and, for that purpose, to adopt the necessary customs legislation.

It is necessary to issue these regulations in order that importers and exporters may be aware in advance of the rules which govern the valuation of goods imported for home use or exported outright and organize their imports on the basis of these new provisions.

HEREBY DECREES:

Article 1: Legal basis and application of customs valuation. The taxable base for the computation of import duties and taxes shall be determined in accordance with the provisions of this Decree and, should the latter be silent on any point, recourse shall be had to the text, notes and annexes which make up the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

The value shall be determined by the duly authorized customs official, in accordance with the regulations and the condition in which the goods to be valued are presented, on the basis of the records and accompanying documents, using the various valuation methods in the order laid down in this Decree and, where necessary, after the physical inspection of the goods, the interested party being required to supply any additional explanations or information requested.

Article 2: Transaction value. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 9, provided:

- (a) That there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - (i) are imposed or required by law or by the public authorities in the country of importation;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 9; and
- (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of the following paragraph.

In determining whether the transaction value is acceptable for the purposes of paragraph 1 of this Article, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

- (i) The transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
- (ii) the customs value of identical or similar goods as determined under the provisions of Article 6;
- (iii) the customs value of identical or similar goods as determined under the provisions of Article 7.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 9 of this Decree and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

However, substitute values may not be established on the basis of the above.

Article 3: Valuation on the basis of identical goods. If the customs value of the imported goods cannot be determined under the provisions of the previous Article, the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued shall be used.

In applying this Article, 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 shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to 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.

The costs and charges of transport, loading, unloading and handling shall be adjusted in value to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

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

Article 4: Valuation on the basis of similar goods. If the customs value of the imported goods cannot be determined under the provisions of Articles 2 and 3 above, the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued shall be used.

In applying this Article, 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 shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to 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.

The costs and charges of transport, loading, unloading and handling shall be adjusted in value to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

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

Article 5: Alternation of the next two methods of valuation. If the customs value of the imported goods cannot be determined under the provisions of Articles 2, 3 and 4 above, the customs value shall be determined in accordance with the next two methods in the order laid down, unless the Customs Administration accepts the request of the interested party that the order be reversed.

Article 6: Valuation on the basis of the unit price of identical or similar imported goods sold in the condition as imported. If the customs value cannot be determined in accordance with the previous three methods, the customs value shall be determined on the basis of the value of the imported goods or identical or similar imported goods sold in the country of importation in the condition as imported.

The customs value of the imported goods determined 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 buy such goods, subject to deductions for the following:

- (i) Either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in Panama of imported goods of the same class or kind;
- (ii) the usual costs of transport, loading, unloading and insurance for bringing the goods to the country and similar and/or associated costs arising in Panama; and
- (iii) the customs duties and other national taxes paid in Panama by reason of the importation or sale of the goods.

If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall be determined in accordance with the second paragraph of this Article on the basis of the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

If neither the imported goods nor identical nor similar imported goods are sold in Panama in the condition as imported, then, if the importer so requests, the customs 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 Panama who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in the second paragraph of this Article.

Article 7: Valuation based on computed value. If the customs value of imported goods cannot be established by the previous methods, it shall be based on a computed value consisting of the sum of:

- (a) The cost or value of materials and fabrication or other processing employed in producing the imported goods;

- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Panama;
- (c) the cost or value of the transport, loading, unloading, handling and insurance expenses.

Panama may not require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of Panama with the agreement of the producer and provided they give sufficient advance notice to the government of this other country and the latter does not object to the investigation.

Article 8: Valuation based on reasonable means. If the customs value of the imported goods cannot be determined in accordance with the methods laid down in the previous Articles, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Decree and of Article VII of the General Agreement on Tariffs and Trade and on the basis of data available in Panama.

No customs value shall be determined under the provisions of this Article on the basis of:

- (a) The selling price in Panama of goods produced locally;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of the previous Article;
- (e) the price of the goods for export to a country other than Panama;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 9: Permitted adjustments to the transaction value. In determining the customs value, additions may be made to the price actually paid or payable as provided in this Article.

In determining the customs value under the provisions of Article 2, there shall be added to the price actually paid or payable for the imported goods only:

- (a) The following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (i) commissions and brokerage, except buying commissions;

- (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) the cost of packing whether for labour or materials;
- (b) 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 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 actually paid or payable:
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;
- (c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) 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.

In Panama, all of the following shall be included in the customs value:

- (a) The cost of transport of the imported goods to the port or place of importation;
- (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) the cost of insurance.

Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

Article 10: Conversion of currency. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of balboas or dollars.

The conversion rate to be used shall be that in effect at the time of declaration for home use or any other procedure which may be applied to the goods in Panama.

On the last working day of each week, the General Directorate of Customs will notify each Regional Customs Administration of the average conversion rate applicable to each currency during

the whole of the following week. The National Bank of Panama shall be the official entity that certifies the average conversion rate.

Article 11: Confidentiality. All information which is by nature confidential or which is provided on a confidential basis for the purposes of the customs valuation of a particular good shall be treated as strictly confidential by the authorities concerned, and they shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings or during the processing of the corresponding declaration applying a particular procedure to the said good.

Article 12: Appeals. With regard to the determination of customs value, the importer or any other person liable for the payment of the customs duties and charges shall have the right to appeal, without penalty, within three working days of the calculation of the customs duties and charges.

An initial right of appeal without penalty may be to the customs administration, but there shall also be a right of appeal, without penalty, to the General Directorate of Customs within five working days of notification of the decision of first instance or of appeal to a judicial authority.

Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.

Article 13: Guarantee of withdrawal before determination of final value. If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable.

Article 14: Definitions. For the purposes of this Decree:

- (a) "customs value of imported goods" means the value of goods for the purposes of levying *ad valorem* duties of customs on imported goods;
- (b) "country of importation" means Panama or the part of its customs territory into which the goods are imported;
- (c) "produced" includes grown, manufactured and mined;
- (d) "identical goods" means goods 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 from being regarded as identical;
- (e) "similar goods" means goods which, although not alike in all respects, 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 trade mark are among the factors to be considered in determining whether goods are similar;
- (f) the terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work,

and plans and sketches for which no adjustment has been made under paragraph 1(b)(iv) of Article 9 because such elements were undertaken in Panama;

- (g) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;
- (h) 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.

"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.

Article 15: Related persons. For the purposes of this Decree, persons shall be deemed to be related only if:

- (a) They are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Decree if they fall within the criteria of the previous paragraph.

Article 16: Explanation in writing. Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of the importer's goods was determined.

Article 17: Right to verify particulars. Nevertheless, the customs shall have the right at any time to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes anywhere in the country.

Article 18: Regulations. At the proposal of the General Directorate of Customs, the Ministry of Finance and the Treasury shall issue, on the basis of this Decree, the regulations necessary to establish the procedures for the application of the various aspects of the valuation of goods.

Article 19: Total revocation. All previous rules for the customs valuation of goods shall be null and void and an authorized copy of this Decree shall be sent to the Legislative Assembly, in conformity with Article 195.7 of the Constitution.

Article 20: Entry into force. This Decree shall enter into force on 1 January 1997.

Done in Panama City on the first of August nineteen hundred and ninety-six (1996).

ERNESTO PÉREZ BALLADARES
President of the Republic

RAÚL MONTENEGRO DIVIAZO
Minister of the Interior
and Justice

MITCHELL DOENS
Minister of Labour and
Welfare

RICARDO ALBERTO ARIAS
Minister of External
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RAÚL ARANGO GASTEAZORO
Minister of the Presidency and
General Secretary of the Cabinet Council

GACETA OFICIAL, Wednesday 16 April 1997

GACETA OFICIAL
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Established by Cabinet Decree No. 10 of 11 November 1903

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YEXENIA I. RUIZ
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MINISTRY OF FINANCE AND THE TREASURY
GENERAL DIRECTORATE OF CUSTOMS
DECISION No. 704-04-017
(of 10 January 1997)

The Director-General of Customs
in the exercise of his legal powers

WHEREAS:

The customs is always anxious to simplify the formalities within its legal powers and seek ways of applying the regulations without affecting the smooth operation of the service.

The procedure for valuing goods has been established by Cabinet Decree No. 26 of 1996 and a valuation system consistent with the General Agreement on Tariffs and Trade (GATT) has been introduced through the issuance of special instructions.

Clearance for home use requires a special and expeditious procedure in the customs offices of the Eastern Zone and the Airport Zone which it may subsequently be possible to apply to all the customs offices forming part of the system and in communication through the National Customs Network (RENAD) of the General Directorate of Customs.

Paragraph 2 of Law 16 of 29 August 1979 authorizes the Director-General of Customs to adopt the measures necessary to improve the service.

Law No. 41 of 1 July 1996 authorizes the Director-General of Customs to take the necessary action continuously to adapt and improve the organization of the service and its administrative procedures.

HEREBY RESOLVES:

Article 1: Clearance procedure. The procedure for processing a declaration for clearance for home use in the customs offices of the Eastern Zone and others to be incorporated in the future, subject to written communication by the Director-General of Customs, is established.

Article 2: Preliminary procedure. The officials in charge of premises authorized to receive foreign goods must enter the whole of each arriving manifest until such entry is made in the ports and airports of arrival in the country.

Article 3: Processing. Import declarations or declarations for home use shall be processed as follows:

Step 1. Lodgement of the declaration

In all cases, the Customs Clearing Agent shall prepare the Unified Customs Declaration in his office and present it (original and five copies) at the counter of the:

- (a) Special Assessment Office (OEL), when it has already been prerecorded and numbered, with all its accompanying documents, in the office of a Customs Clearing Agent connected to the system;
- (b) Security Office (OG), when it has been decided that security must be lodged before the goods can be processed and withdrawn, because they are subject to an exemption or because some special particulars are lacking;
- (c) Central Assessment Office (OCL), when the customs clearing agents are not connected to the system or when the premises where the goods are being kept does not form part of the system.

These three offices shall receive the Unified Customs Declaration together with the corresponding shipping documents, invoices and other papers required by the system.

The customs official who receives the declaration shall also receive from the Customs Clearing Agent a receipt on which he shall merely be required to note the date and time of acceptance of the declaration and affix his signature and stamp. This receipt must indicate the number of documents supplied. (It is listed as Annex 1.)

- (a) Customs clearing agents not connected to the system may lodge their unified customs declarations at the said premises and obtain the corresponding payment slip.
- (b) Customs clearing agents connected to the system may lodge the already prerecorded unified customs declarations to obtain the corresponding payment slip.

Step 2. Examination

I. The declaration is passed to the examiner who shall:

Firstly:

- (a) Check that there are no blots and smudges, writing between the lines or corrections;

- (b) make sure that the f.o.b. price on the invoice is not less than that indicated on the declaration;
- (c) verify that the number of packages on the bill of lading or air or land waybill is not less than that declared;
- (d) check whether any certificate issued by some authority is required in respect of the goods for which clearance is requested;
- (e) in the case of declarations which call for the lodging of security, the official shall verify that the security conforms with the requirements and enter it in the security register.

Secondly:

If these conditions have been met, the examiner shall instruct the system to make the assessment and issue the payment slip and shall send the documents for punching and separation.

Otherwise, he shall draw attention to the error and immediately return all the documents to the party concerned in order that they may be corrected and the declaration resubmitted.

II. The punching or numbering and separating officer shall:

- (a) Punch all the documents corresponding to the declaration with the handwritten number which has been allocated by the system;
- (b) separate the document and deliver the corresponding copies to the agent, using the appropriate pigeonhole;
- (c) retain copies (third and fourth, sky blue) to be sent to the Inspector's Office and the original for the archives, to be delivered weekly to the Archives Section.

Step 3. Payment slip

The interested party shall take the remaining three copies of the declaration and the payment slip plus the other accompanying documents and proceed to the authorized bank to pay the total amount indicated on the slip. He shall then present himself with this prepaid document and the copies of the declaration at the authorized premises where the goods are being kept.

Step 4. Examination

The computerized system will indicate on a random basis whether or not the goods must be physically inspected.

- (1) If no physical inspection is required, the Customs Clearing Agent or whoever he may have so authorized shall take the documents to the warehouse and present them directly for the purpose of withdrawing the goods.
- (2) If physical inspection is required, the examiner shall classify, value and apply the rules applicable to the goods, bearing in mind that:

- (a) The goods must be valued by systematically applying the methods indicated in Articles 2, 3, 4, 6, 7 and 8 of Cabinet Decree No. 26 of 1 August 1996, in addition to the other rules laid down concerning valuation under the GATT;
- (b) where appropriate, the declared value shall be compared with information obtained from the Valuation Section or the data in his possession relating to similar inspections;
- (c) in the case of new or used automobiles, ships or aircraft, new or used machinery or heavy equipment (including mining machinery and self-propelled agricultural machinery and construction plant) and, in general, used goods, except for used goods arriving in traveller's baggage or as household effects:
 - (i) the examiner shall make his appraisal and send the declaration to the Valuation Section for a mandatory opinion;
 - (ii) the Section shall give a ruling within two days, either **approving** the value proposed by the examiner or **declaring a provisional value** based on its records, while investigating that which should actually be applied to the goods.

Note:

- I. In the latter case, if the interested party agrees, payment shall be made on the appraised value and security shall be given for the disputed portion until the Valuation Section has taken a decision.
- II. The security shall be deposited with the corresponding regional administration.

Step 5. Withdrawal or release

- (a) **If the results of the examination are satisfactory**, the examiner shall pass on the declaration to the official responsible for entering into the system the particulars of the person withdrawing the goods (who must always be authorized by the Clearing Agent concerned). This official shall also enter:
 - (i) The amount paid;
 - (ii) the general particulars of the person withdrawing the goods;
 - (iii) particulars of the vehicle in which the goods are to be transported; and
 - (iv) shall instruct the system to issue a **release note**, a document which shall remain in the possession of the warehouse.
- (b) **If the results of the examination are not satisfactory**, the examiner shall so indicate and shall make the corresponding adjustment for the tariff differences, without prejudice to those for misdeclaration of value.

The Agent shall lodge a new declaration for the difference and have it processed in the usual way.

Article 4: Cancellation of a registered declaration. Once the system has allocated a registration number to a declaration it shall be deemed to have been accepted by customs and the interested party may request customs to cancel it only in the following cases:

- (a) If the legal requirements for its acceptance (registration) are not fulfilled;
- (b) if the goods do not appear, in their entirety; and
- (c) if before physical inspection, the interested party decides to lodge another declaration substituting for the home clearance procedure some other different but equally definitive procedure, provided that it covers all the packages for which clearance was requested in the original declaration.

Article 5: Other disposals which also require valuation. Other disposals requiring valuation in various circumstances shall be requested by means of a unified customs declaration and shall receive the same treatment, without the approvals and endorsements of other customs authorities being required to initiate processing.

Article 6: Activities of the Valuation Section. From the date of entry into force of this Decision, the Valuation Section shall carry out its various activities independently of the document processing function, as indicated below.

While transferring information to the examiners, the Section shall rule on the appropriate values within the time-limits laid down by the General Directorate of Customs.

Article 7: It shall be responsible for carrying out the following activities:

- | | |
|----------------|--|
| Group 1 | <ul style="list-style-type: none"> 1. Obtain information on the goods considered most sensitive by customs. 2. Process or verify this information and record it so that it may be used for reference purposes by the examiners. 3. Deliver it for distribution to all examiners and regional administrators. 4. Answer the specific inquiries of the examiners when they need information. File the answers for possible reuse in similar cases. |
| Group 2 | <ul style="list-style-type: none"> 1. Find out the trading structures of the enterprises which regularly export goods to Panama. 2. Get to know the trading structures of the enterprises which import goods into Panama. 3. Procure the lists of prices which importers receive or obtain, especially for the most sensitive goods. 4. Put the information into usable form and incorporate the verified data in the value file established by ASYCUDA. |
| Group 3 | <ul style="list-style-type: none"> 1. Prepare final decisions on valuation appeals submitted by interested parties. |

2. Prepare numbered instructions on the various aspects of valuation and have them circulated among regional administrations and examiners.

Group 4

1. Prepare a decision establishing the method to be used by the Valuation Section as a basis for valuing used goods and damaged goods.
2. Determine how this method shall be gradually applied by the examiners themselves while the Section ceases to participate directly in the said valuation.
3. Establish the procedure for valuing Canal Zone goods officially auctioned for consumption in the rest of the country.

Group 5

While transmitting to all the examiners the records in its possession, the Valuation Section shall, within a maximum period of two days, confirm the value applied by the examiner and fix a provisional value pending the determination of the exact value to be placed on the goods.

The goods which must mandatorily be submitted to the Valuation Section for review are:

1. Automobiles, new or used.
2. Ships and aircraft, new or used.
3. Heavy machinery/equipment, new or used.
4. Mining machinery and self-propelled machines, new or used.
5. Footwear, other than sports footwear.

Article 8: Mandatory consultation. The mandatory consultation of the Valuation Section shall have a suspensive effect with respect to the records mentioned above under the activities of group 5 as the examiners and regional administrations receive them.

Article 9: Timetable. The Valuation Section shall provide the information needed by the examiners to perform their tasks, allowing a maximum of thirty (30) days for each activity listed under group 5 of Article 7 above. This period shall commence from the date of publication of this Decision.

Done in Panama City on the tenth of January nineteen hundred and ninety-seven.

For registration, communication and implementation.

Carlos E. Icaza E.
Director-General of Customs

Erick Bravo D.
General Secretary

GACETA OFICIAL, Tuesday 5 August 1997

**GACETA OFICIAL
ORGAN OF THE STATE**

Established by Cabinet Decree No. 10 of 11 November 1903

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1 year, domestic B/36
6 months abroad B/18 + airmail
1 year abroad B/36 + airmail
All payments in advance

**MINISTRY OF FINANCE AND THE TREASURY
GENERAL DIRECTORATE OF CUSTOMS
DECISION No. 704-04-019
(of 10 January 1997)**

The Director-General of Customs
in the exercise of his legal powers

WHEREAS:

On 1 January 1997 our country began applying the Valuation System for foreign goods in accordance with the provisions of Cabinet Decree No. 26 of 1 August 1996, which annuls all previous provisions concerning customs valuation.

The country is in the process of internationalizing its economy, which is making it necessary to standardize, simplify, harmonize and decentralize the valuation of foreign goods in all the Republic's customs offices and make it less bureaucratic.

Specific instructions for the valuation of special goods, such as used automobiles, need to be included in the Valuation System under Article VII of the General Agreement on Tariffs and Trade (GATT).

Law 16 of 29 August 1979 created the General Directorate of Customs under the Ministry of Finance and the Treasury and, pursuant to its Article 6.2, the Director-General of Customs is empowered to adopt the measures necessary to improve the service.

Law No. 41 of 1 July 1996 gives the Director-General additional powers to take the necessary action continuously to adapt and improve the organization of the service and its administrative procedures, which entails the application, in the first instance, of the provisions of Cabinet Decree No. 26 of 1 August 1996 and, secondarily, of the instructions issued by the General Directorate of Customs.

HEREBY DECIDES:

First: Definition. For customs purposes, "used automobiles" shall mean those which satisfy all of the following conditions:

- (a) Have been licensed in some country or are registered with some national or international official body;
- (b) have been driven more than 5,000 km.; and
- (c) whose year of manufacture is earlier than the year of importation.

Second: Importation of used vehicles. For the importation of used vehicles, the invoice prices shall be accepted if they are those of vehicle auctioneers or enterprises or entities recognized by the Customs Administration.

In other transactions involving judicial or administrative authorities or effected between private individuals, on whatever basis and in whatever form, or by distributors, the customs value shall be determined starting from the value as new, in accordance with the price list supplied by Panamanian new vehicle dealers, with application of the percentage depreciation for use specified in the third paragraph of this Decision and in accordance with the parameters laid down in this Decision.

Third: Use of the new vehicle price list with reductions for years of use. If it is not possible to apply the invoice value of used automobiles constituting special goods that cannot be valued by any of the four extra-contractual methods established by the GATT Valuation System, valuation shall be based on the method of last resort and reasonable means, by taking a flexible approach to the value of similar goods.

The procedure shall be as follows:

- (a) The new vehicle prices indicated in the price lists supplied by the importing distributors shall serve as a basis for valuation by the method of last resort or reasonable means;
- (b) the rebate or reduction on the price of the new vehicle shall be 15 per cent per year and the following table shall be applied:

<u>Year</u>	<u>Depreciation</u>
From the first year	Fifteen per cent (15%)
From the second year	Thirty per cent (30%)
From the third year	Forty-five per cent (45%)
From the fourth year onwards, once only	Sixty per cent (60%)

Fourth: Other possible reductions. The prices established in accordance with the third paragraph shall not be rigidly fixed since, where appropriate, consideration shall be given to special wear and tear due to breakdown or damage, subject to the maximum percentages laid down in the sixth paragraph of this Decision.

Only the values corresponding to the new vehicle may be used, provided that prices are available for the same makes and models.

If no prices are available for the same makes and models, the method described below shall be used.

Fifth: Establishment of special lists of domestic-market automobile prices. When the invoice price is not applicable and there are no prices available for identical or similar goods and, for lack of information, it is not possible to use any of the other methods envisaged by the General Agreement on Tariffs and Trade (GATT) other than that of last resort but based on goods which have been imported into Panama and are being traded and with respect to which deductions have been made for customs duties and taxes by applying the deductive method.

Within three (3) months of the publication of this Decision, the Valuation Section shall prepare and supply lists of the prices of these automobiles to the examiners who will then be able to establish the value using the same procedure.

The enquiries which the Valuation Section receives from examiners shall be answered in writing, by fax or by other expeditious means.

Sixth: Discounts for wear and damage. When used automobiles display wear or damage incurred subsequent to invoicing or the price of the new vehicle with depreciation for use is employed, it shall also be possible to use a corresponding table of reductions in the following form:

- (a) According to studies furnished by the motor vehicle manufacturers, the various parts of the vehicle represent percentage values which together add up to the total value of the complete vehicle.
- (b) These percentages are as follows:
 - (i) Engine system 18%
Main parts and components:
Exhaust manifold
Carburettor
Air filter assembly
Radiator assembly
Exhaust pipe and silencer
 - (ii) Chassis/bumpers 2%
Main parts and components:
Front bumpers
Rear bumpers
 - (iii) Electrical system 13%
Main parts and components:
Dashboard instruments
Alternator
Starter motor
Wiring components
Battery
Headlights
Windscreen wipers and motor
Electrical connectors

(iv)	Transmission system Main parts and components: Gearbox assembly Automatic transmission parts/components Differential shaft	10%
(v)	Steering system Main parts and components: Steering mechanism Steering wheel Hydraulic pump assembly	4%
(vi)	Suspension system Main parts and components: Shock absorbers Shock absorber bearings Springs Tyres	9%
(vii)	Brake system Main parts and components: Brake drums Pads or disks	4%
(viii)	Fuel system Main parts or components: Fuel tank Piping and joints	5%
(ix)	Body Doors Mudguards Boot lid Windscreens Door windows Instrument panel Console Safety belts Air-conditioning system Heating system	35%

- (c) If there is post-invoicing damage, the total loss of a part of the vehicle shall be assessed on the basis of the above-mentioned percentages, but taking into account that the total destruction of the part shall only permit the application of, at most, seventy per cent (70%) of the percentage corresponding to that part.
- (d) If the loss is not total, the percentage damage as assessed by the examiner for that part of the vehicle shall be applied, without exceeding the maximum of seventy per cent (70%) stipulated in the previous subparagraph.
- (e) In order that the examiner may assess the damage, if it cannot be verified by simple visual inspection, it shall be certified by a specialized workshop.

Seventh: Application of the valuation methods. The methods of valuing used automobiles described in this Decision shall be mandatorily applied in the same order as laid down.

Eighth: *Ex post facto* controls. The Procedural Audit Department of the General Directorate of Customs shall carry out random checks on used vehicle valuations, paying special attention to declarations claiming reductions for damage.

Ninth: Road and environmental safety. The conditions of vehicle safety and guarantees thereof shall be provided in accordance with the rules of competition that govern the market.

However, a certificate issued by the manufacturer or the competent authority of the country of origin indicating that the vehicle has a catalytic converter or a gas emission control system authorized in the country of exportation shall be required by customs as from 1 January 1998.

Tenth: Entry into force. This Decision shall enter into force as from its publication in the Gaceta Oficial and shall supersede any contrary provisions.

Legal Basis: Law No. 16 of 29 August 1979, Law No. 41 of 1 July 1996, and Executive Decree No. 42 of 24 November 1983.

For registration, communication and implementation.

Carlos E. Icaza E.
Director-General of Customs

Erick D. Bravo Dutary
General Secretary

GACETA OFICIAL, Thursday 23 October 1997

GACETA OFICIAL
ORGAN OF THE STATE
Established by Cabinet Decree No. 10 of 11 November 1903

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MINISTRY OF FINANCE AND THE TREASURY
GENERAL DIRECTORATE OF CUSTOMS
DECISION No. 704-04-528
(of 1 October 1997)

The Director-General of Customs
in the exercise of his legal powers

WHEREAS:

The Ministry of Finance and the Treasury is committed to the implementation of a programme of modernization and decentralization aimed at organizing and simplifying customs procedures with a view to offering taxpayers and/or users a modern and efficient public service within the framework of the law.

Law 16 of 29 August 1979 created the General Directorate of Customs and its Article 6.2 empowers the Director-General of Customs to adopt the measures necessary to improve the service.

Law No. 41 of 1 July 1996 gives the Director-General additional powers to take the necessary action continuously to adapt and improve the organization of the service and its administrative procedures.

On 1 January 1997, Panama began applying the Valuation System for foreign goods, in accordance with the provisions of Cabinet Decree No. 26 of 1 August 1996.

The said Decree annuls all previous provisions concerning valuation, which means that only the provisions of the Decree and the regulations issued by the General Directorate of Customs shall apply.

The valuation of used goods calls for specific instructions within the Valuation System under the General Agreement on Tariffs and Trade (GATT) and the General Directorate of Customs is

responsible for regulating these aspects pursuant to Article 1 of Cabinet Decree No. 26 of 1 August 1996.

HEREBY DECIDES:

Article 1: Definition. "Used goods" shall mean those goods, whether produced or manufactured, which have been the object of an initial sale and have already been used in accordance with their description or conditions laid down by the regulations in force. For valuation purposes, used goods shall be divided into: (a) goods in general; (b) specific goods.

- (a) For valuation purposes, "used goods in general" shall mean those used goods whose customs value relates exclusively to use and not to other special conditions of sale, thereby making it possible to determine the value by a general procedure which customs can apply indiscriminately.
- (b) "Specific used goods" shall mean those used goods which have been or must be specially studied by customs due to conditions not presented by other used goods and those which assume special importance in relation to taxation. These latter, which shall be defined in each case by a decision of the General Directorate of Customs, include: automobiles, new and used construction, mining and agricultural machinery, new and used ships and aircraft and other goods as decided by customs.

Article 2: Valuation alternatives. The valuation alternatives are described in the valuation decree, namely:

- (a) The use, as a basis, of the invoice price;
- (b) the use of the four extra-contractual valuation methods;
- (c) the use of the method of last resort which allows flexibility in the application of the previous methods.

Article 3: Valuation based on the invoice price. This method shall be applied when the invoice comes from an auctioneer or when customs recognizes the enterprise as a seller of used goods.

Customs shall grant recognition if the facts are confirmed by newspapers or by information from inspections or investigations conducted by the Valuation Section.

Before the invoice can be accepted, a check must be made to ensure that the values are approximately the same as those which customs has on record and that there has been no false invoicing.

In any event, a previous transaction offering some form of proof that the invoice accords with identical or similar goods being valued shall constitute sufficient evidence for accepting its authenticity.

Article 4: Acceptance of the invoice. Customs shall accept the invoice as a basis of valuation:

- (a) **Only if the particulars it provides** correspond to the condition in which the used goods are presented. If the invoice gives no description of the use, the invoice price shall be rejected;

- (b) **if it comes from an enterprise specializing** in the sale of used goods, unless it includes a product whose price differs substantially from the prices which customs uses for reference purposes.

Article 5: Application of the next four extra-contractual methods. If the invoice price is rejected since it fails to satisfy the above conditions, an attempt must be made to apply a value in accordance with the other valuation methods available.

However, an analysis of these methods shows that none of them is applicable:

- (a) Identical goods method:

Because there are no other goods identical with respect to use. Not even the time or date of manufacture or sale is the same; the wear and tear or use may be very different.

Thus, if the price difference is based on use, it is not possible for there to be one good identical to another enabling its value to be used for the collection of customs duties.

- (b) Similar goods method:

Because, as with identical goods, there are no other similar goods with the same use.

- (c) Deductive method:

Because it is not possible to seek on the local market an identical or similar good which has had the same use and then derive the base price for determining the dutiable value.

There is no similarity of use since use excludes a similar quality or life, which prevents customs from using the price of goods which are already in circulation after having been imported as a basis for the determination of the dutiable value.

- (d) Computed value method:

It is possible to compute the value of a new good since the information relates to a good recently produced by the factory. However, it is not possible to compute the value of a used good since it is not possible to determine the use exactly without assuming an arbitrary depreciation. This arbitrary depreciation will differ depending on the kind of goods to be valued and the resulting prices could not be used for computing the true value of another used good.

Article 6: Application of the method of reasonable means or last resort. The only method that can be used to value these goods is the method of reasonable means, also known as the method of last resort.

For determining the value in accordance with this method the following mandatory procedure, which must be used by all officials, is laid down:

- (a) Seek the value of other imports identical or similar in nature, though different with respect to use:
 - (i) which customs has previously processed;

- (ii) which were invoiced on the same selling market;
 - (iii) whose processing was completed not more than one year previously.
- (b) Use the information to determine the dutiable value, together with the data furnished by:
- (i) the importer himself, from previous clearances for home use, whether his own or made by others, even though there may be a difference in commercial level with respect to the other importer;
 - (ii) the Valuation Section, for reference purposes, provided that these values are within a range of 10 per cent above or below.
- (c) Use as a basis the **price of similar new goods**, obtained by customs and reduced for years of use in accordance with the following table:

USED GOODS VALUATION TABLE

Goods	Depreciation for use
1. Ships and aircraft (light aircraft, microlights) (luxury yachts, fishing boats)	When the customs value is determined on the basis of the price of a new good the following maximum depreciation shall be applied: 15% per year, after the first year. Maximum reduction: 75% of the value of the new good.
To obtain a reference value for:	
(a) Aircraft: the technical certificate of the Office of Air Safety may be used. (b) Ships: the survey value report of the General Directorate of Consular Matters and Ships may be used as information for determining the value.	
2. Heavy equipment for agriculture and construction (portal cranes and builder's cranes). 3. Mining machinery, self-propelled machinery, lift trucks and the like. 4. Outboard motors, inboard marine engines, tricycles, Jet Sky, motorcycles, 4-wheel drive and similar light equipment.	When the customs value is determined on the basis of the price of a new good the following maximum depreciation shall be applied: 15% per year, after the first year. Maximum reduction: 75% of the value of the new good.
5. Electronic equipment, including: radios, television sets and computers.	When the customs value is determined on the basis of the price of the new equipment the following maximum depreciation shall be applied: 30%, from the second year of appearance of the model; and 20% for each subsequent year up to a maximum of 70% of the value as new.

Article 7: Other considerations which must be taken into account. The examiner shall reject invoices which do not satisfy the following conditions:

- (a) The price may only be invoiced by the foreign supplier;
- (b) consolidators may not invoice the prices of goods because they are not the sellers and if they are they must invoice the goods separately from the invoices for their services;
- (c) the cargo agent, the shipper, the consolidator, the carrier and the deconsolidator are not authorized to invoice goods.

Article 8: Depreciation for damage. Damage, other than normal wear and tear, incurred since the invoicing of the used goods or since the determination of their customs value by the method of reasonable means shall be treated in accordance with the following maximum depreciation table:

USED GOODS DEPRECIATION TABLE

Goods	Depreciation for damage
1. Ships and aircraft (light aircraft, microlights) (luxury yachts, fishing boats)	The maximum percentage for damage cannot be more than 30% of the customs value obtained on the basis of an acceptable invoice or the price of the goods as new reduced for use.
2. Electronic equipment, including: radios, television sets and computers.	
3. Outboard motors, inboard marine engines, tricycles, Jet Sky, motorcycles, 4-wheel drive and similar light equipment.	
4. Heavy equipment for agriculture and construction (portal cranes and builder's cranes).	The maximum percentage for damage cannot be more than 50% of the customs value obtained on the basis of an acceptable invoice or the price of the goods as new reduced for use.
5. Mining machinery, self-propelled machinery, lift trucks and the like.	

With respect to the application of the preceding table it is important to take into consideration that:

- (a) **The percentage depreciation for damage** must be applied to the price reduced for use and only if the damage has been incurred since the goods were invoiced.

For this it is necessary to produce evidence of the time at which the damage occurred, whether provided by the carrier, an official authority or the insurance company concerned.

- (b) **A percentage depreciation for damage shall also be applied** if the reduction for use has been given on the basis of the price as new.

Article 9: Request for information. Examiners shall request the appropriate information from the importers themselves or the customs clearing agents representing them who shall be obliged to provide it and do everything they can to obtain it in good time since this will determine how quickly the goods can be cleared for home use.

In the event of it not being possible to procure the relevant information, it may be requested from the Valuation Section which is responsible for obtaining it, especially with regard to those goods which are regularly being valued by customs.

Article 10: Sanctions. Once the responsibility of the official or user has been determined, failure to comply with this Decision shall be sanctioned in accordance with the provisions of Law No. 30 of 8 November 1984.

Legal basis: Law No. 16 of 29 August 1979, Law No. 41 of 1 July 1996, Cabinet Decree No. 26 of 1 August 1996, and Executive Decree No. 42 of 24 November 1983.

For registration, communication and implementation.

Carlos E. Icaza E.
Director-General of Customs

Erick D. Bravo Dutary
General Secretary

GACETA OFICIAL, Monday 20 October 1997

GACETA OFICIAL
ORGAN OF THE STATE
Established by Cabinet Decree No. 10 of 11 November 1903

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MINISTRY OF FINANCE AND THE TREASURY
GENERAL DIRECTORATE OF CUSTOMS
DECISION No. 704-04-528
(of 1 October 1997)

The Director-General of Customs
in the exercise of his legal powers

WHEREAS:

The Ministry of Finance and the Treasury is committed to the implementation of a programme of modernization and decentralization aimed at simplifying customs procedures with a view to offering taxpayers and/or users an efficient service within the framework of the law.

This programme considers it essential to maintain and improve the control systems which enable the Customs Service to know the true mode of disposal of goods arriving in the country.

Law No. 16 of 26 August 1979 created the General Directorate of Customs under the Ministry of Finance and the Treasury.

Law No. 41 of 1 July 1996 amended Law No. 16 of 1979 and empowered the Director-General to adapt and improve the organization of the service and its administrative procedures, in accordance with the technical rules of customs administration.

In accordance with these provisions, it is the responsibility of the Director-General of Customs to take the measures necessary to improve the controls which the Customs Service must apply.

For the purpose of standardizing administrative procedures the application of the Automated Customs System (ASYCUDA) is being developed in all the customs offices of the Republic, which has made it possible for all the premises covered by Law 6^a of 19 January 1961 to carry out a process of control of foreign goods arriving in the country.

Thanks to the high level of development achieved it is already possible to adopt a special and expeditious procedure for transport enterprises to submit their manifests to customs and for the latter to incorporate the data required by the computerized system.

HEREBY DECIDES:

Article 1: Establishment of a Premises Control Office. A Premises Control Office shall be set up under the Regional Administrator of Customs of the Eastern Zone and the Airport Zone for the following purpose:

- (a) Control the arrival and departure of vessels within the relevant administrative area;
- (b) enter the manifest particulars; and
- (c) check the efficacy of the inspections conducted on premises authorized to store foreign goods.

Article 2: Basis of customs control. The legislation in force authorizes customs to control and inspect foreign goods entering the customs territory. Accordingly, customs must receive the manifest or freight list from the means of transport in order to enter the particulars, whether manually or electronically.

Article 3: Organization of the Section. The Premises Control Section shall consist of a Vessels and Manifests Subsection and an Inspection Subsection.

The role of the Vessels and Manifests Subsection shall be to receive vessels and their manifests, check that they comply with national customs regulations and enter the particulars of consignments declared at arrival and then unloaded and delivered to the various places authorized to store foreign goods.

The role of the Inspection Subsection shall be to make a selective check on all the examinations carried out in the customs office in order that any errors may be rectified and the State may receive its lawful dues.

Article 4: Operation of the Vessels and Manifests Subsection. This Subsection shall consist of:

- (a) The Vessel Reception Office which shall be responsible for having the vessel visited on arrival on behalf of customs, for accepting the manifests, which must be handed over by the captain, for sealing compartments, where necessary, to prevent illegal disposal of the goods and for inspecting all vessels which enter port carrying foreign merchandise;
- (b) the Manifest Input Office shall enter the particulars provided either on documents or electronically, number and register them and make any necessary corrections;
- (c) fill out transfer and transit forms and carry out the control operations relating to these customs procedures.

Article 5: Functions of the Manifest Input Office. Documentary manifests shall be entered manually by customs as soon as they receive the document from the officer visiting the vessel or the shipping company.

When the information is supplied electronically and the corresponding particulars are entered, they shall merely be stored and not registered until the documentary manifest is delivered. Only then may an appropriate number be assigned and work begin on the re-exportation, transshipment, transfer or transit of the goods or their clearance for home use.

No manifest may remain in the Manifest Office without being stored or registered in the system or if it has been only incompletely registered.

Article 6: Responsibilities of shipping company. The shipping company shall be responsible for visiting the vessel on arrival and delivering the manifest to customs.

The manifest may be lodged with customs by electronic means approved by the Information Technology Section of the General Directorate of Customs up to 48 hours in advance of the arrival of the vessel. However, this shall not relieve the company of its obligation to visit the vessel on arrival.

Article 7: Operation of the Inspection Subsection. The Inspection Subsection shall consist of officers specialized in classification, valuation and special regulations concerning goods for clearance.

Their function as inspectors shall be to re-examine goods declarations for home use on a random basis to ensure that they comply with the requirements of the regulations in force.

The inspectors of this Section shall, jointly with the customs examiners, be responsible for any errors which the latter may have made and failed to detect, report and/or correct at the time.

Article 8: Functions of the Inspection Subsection. The officials of the Inspection Subsection shall:

- (a) Receive the information from the Automated Customs System indicating which declarations need to be re-examined;
- (b) carry out inspections daily at each premises and verify that the examination made previously by the local examiner complied with the classification, valuation and other rules applicable;
- (c) the inspectors shall operate in four two-man teams. When the examiners have already reported the result of their examination to the Automated System, the inspectors shall re-examine the goods;
- (d) where there is reasonable doubt, the inspectors shall retain the declaration and take the appropriate steps to reactivate the clearance immediately;
- (e) however, their decision shall be valid for the system so that, once the re-examination has been carried out, if the results are satisfactory a release note shall be issued or, if they are not, a counter demand for any difference shall be prepared;
- (f) at the end of their day's work they shall prepare a report showing which declarations were re-examined and the errors found and submit it to the Head of the Inspection Subsection for information and transmission to the Audit Office, where appropriate.

Article 9: Customs Audit. The Procedures Audit Department shall conduct the internal investigations it considers necessary in order to assess the actual performance of the examiner and the inspector.

The fact that the examinations and re-examinations have been carried out shall not prevent the auditors from reviewing the actions of those responsible and verifying their compliance with the regulations in force.

Article 10: Sanctions. Failure to fulfil the functions, procedures and responsibilities stipulated herein shall be sanctioned in accordance with the respective provisions of Law No. 30 of 8 November 1984.

Single Provisional Article: While the administrative structures of the Regional Customs Services are being reorganized, the Premises Control Section shall report directly to the General Directorate of Customs.

Legal basis: Articles 498, 499, 500, 501, 502, 503 et al. of the Tax Code, Law No. 16 of 29 August 1979, Law No. 41 of 1 July 1996, Executive Decree No. 42 of 24 November 1983.

For registration, communication and implementation.

Carlos E. Icaza E.
Director-General of Customs

Erick D. Bravo Dutary
General Secretary

DECISION No. 704-04-532
(of 17 September 1997)

The Director-General of Customs
in the exercise of his legal powers

WHEREAS:

The Ministry of Finance and the Treasury is committed to modernization and administrative decentralization for the purpose of simplifying customs procedures and offering taxpayers and/or users a modern and efficient public service within the framework of the law.

Law No. 16 of 29 August 1979 created the General Directorate of Customs under the Ministry of Finance and the Treasury as the entity directly responsible for the administration, verification, control and supervision of customs duties.

Article 2.5 of Law No. 41 of 1 July 1996 established that the purpose of the new customs regime is to simplify customs administration and the various customs procedures.

The same Law empowers the Director-General to take the necessary action continuously to adapt and improve the organization of the service and its administrative procedures, including the procedure for declaring the value of goods for customs purposes.

On 1 January 1997, Panama began applying the Valuation System for foreign goods, in accordance with the provisions of Cabinet Decree No. 26 of 1 August 1996, which annuls all previous provisions concerning valuation.

Consequently, only the provisions of the Decree and the instructions issued by the General Directorate of Customs will be applied for establishing the customs value of goods, in accordance with the Valuation System of the General Agreement on Tariffs and Trade (GATT).

HEREBY DECIDES:

Article 1: Terms of sale (Incoterms). The invoice shall indicate the terms or mode of sale used in the transaction it represents. Otherwise, the importer himself shall declare the mode or terms of sale. The Customs Clearing Agent or the importer himself, where appropriate, shall indicate them in the declaration for home use.

Article 2: Procedure for declaring the terms of sale in the goods declaration. To establish how the transport costs, the insurance and other loading, unloading and handling costs shall be declared to customs, the importer, where appropriate, or the Customs Clearing Agent shall proceed as follows:

- (a) **If the declaration indicates that the transaction has been effected on a c.i.f. basis,** all the costs up to the arrival of the goods in the country will be included in this c.i.f. value; accordingly, the corresponding values shall not be adjusted for carriage, insurance and other loading and unloading costs.

Being the responsibility of the seller, the carriage, insurance, loading and unloading costs, even though incorporated in the total price of the goods, may not be modified, increased or reduced unless the customs find that there is an excessive difference between the declared values and those which it uses for information purposes and, moreover, the importer is unable to offer an acceptable explanation.

- (b) **If the declaration indicates that the transaction has been effected on a f.o.b. basis**, the total transport costs and the unloading costs must be included in the price of the goods.

The only portion which may be deducted is that corresponding to domestic transport when indicated in the bill of lading issued in the port of departure, provided that the cost of transporting the goods from the foreign country to the port of arrival and the amount paid for domestic carriage in Panama are clearly distinguished.

The attestations given by the carrier or bodies authorized to issue secondary way-bills or bills of lading covering deconsolidated goods must correspond to the contract actually concluded with the shipper.

- (c) **If the declaration indicates that the transaction has been effected on a FAS basis**, the loading, transport and unloading costs must be added to the price of the goods.
- (d) **If the declaration specifies an ex-factory or ex-warehouse transaction**, the price of the goods will have to be adjusted for the transport, insurance and handling costs necessarily incurred in order to bring them alongside the means of transport which will convey them to Panama. To these costs in the country of exportation there must be added the loading, transport and insurance costs for carrying the goods and unloading them in Panamanian customs territory.

Article 3: Concept of international freight. International freight includes all the domestic transport costs in the country of exportation from which the goods are consigned to Panama and any loading and unloading costs incurred in this connection, if not already included in the transport costs themselves.

Therefore, in every case, **even if the freight costs are greater than the price of the goods**, it is necessary to add all the freight costs in order to constitute the value for customs purposes.

Article 4: Deductions for domestic carriage. Deductions for domestic carriage shall only be accepted if separately indicated on the corresponding bill of lading because so agreed between the shipper and the carrier at the time of loading abroad.

Therefore, values shall not be reduced for "house to house" transport if the local transport costs are not separately indicated on the same bill of lading.

If customs finds that a declaration does not correspond to the values agreed between shipper and user or exceeds the actual costs of domestic transport in Panama or if the carrier has certified or indicated a non-existent or excessive discount, the sanctions laid down in Law No. 30 of 1984 shall be applied.

Article 5: Lack of records. If there is no record of the freight costs, it shall be mandatory to apply the average table of existing air, land and sea transport tariffs obtained from the normal schedules of charges applied by the various carriers, which shall be published and kept up to date by the General Directorate of Customs by means of a decision prepared by the Valuation Section on the basis of its research.

If the goods are such as to permit the application of either a tariff by weight or a tariff by volume, the lesser of the two shall be used.

The interested party may appeal the tariff applied and to facilitate the decision shall furnish the Regional Customs Administration with reliable evidence that the lower amount asserted in his appeal is that which the company which actually transported the goods would charge.

Article 6: Apportionment of freight costs. If the goods have different tariff classifications and it is necessary to apportion the freight costs, they shall be divided up percentage wise on the basis of the weight corresponding to each tariff heading.

Article 7: Declaration of insurance. The total cost of insurance shall always be added to the customs value of the goods for which clearance is being requested, even if they are transported by air and the insurance companies are domestic.

Article 8: Declaration of insurance dependent on the terms of the transaction. The insurance shall be declared differently depending on the terms of the transaction:

- (a) **If the terms of the transaction are ex-factory, f.o.b., FAS or C&F,** the total insurance shall be added to the price of the goods, and if this figure is not available there shall be added the appropriate amount according to the average insurance table published by the Valuation Section for this purpose.

Paragraph. Within three (3) months of the publication of this Decision, the Valuation Section shall publish this average table. In the meantime, customs clearing agents shall determine and apply the percentage which would usually be charged by an insurance company established in the country: (a) for the same goods, (b) from the same country of purchase.

- (b) **If the terms of sale are C&I (Cost and Insurance),** the insurance costs will already be included in the invoiced price; accordingly, if the insurance certificate indicates a different amount of insurance, this amount shall be declared and the difference shall be deducted from the f.o.b. price of the goods. Since, in any event, the total C&S will be the same, to obtain the c.i.f. value it will only be necessary to add the transport costs.
- (c) **If the terms of sale are c.i.f.,** the invoice total shall be declared in the box of the declaration for home use corresponding to the c.i.f. value. When the insurance and/or freight costs indicated in the respective documents do not coincide with those shown on the invoice, they shall be declared as indicated in the said transport and insurance documents and the difference shall be deducted from the f.o.b. value, so that the value declared on the invoice is maintained as the c.i.f. value.

Article 9: Global insurance. If the insurance applied to the goods being cleared is a global insurance, **it will be necessary to factorize** by dividing the total amount of the insurance premium by the total global insurance and multiplying this factor by the total C&F value of the imports being declared for clearance for home use.

If the goods have different tariff classifications, it will be necessary to divide up the insurance costs percentagewise on the basis of the value for each tariff heading.

Article 10: Free zone prices. Goods from the free zone shall be valued in the same way as goods sold from abroad. Accordingly, the selling prices of the goods indicated on the invoices shall be accepted if they correspond to an actual sale and the invoiced price shall be regarded as that of a c.i.f. sale, since the goods are already in the country.

The entry documents and the original invoices of the foreign seller or supplier issued in favour of the trader or user in the free zone shall provide a reliable basis for the acceptance of the invoices issued when the goods are sold to Panamanian importers.

Article 11: Processing zone prices. When processing zone goods are cleared for home use, the total c.i.f. value of the foreign components shall be declared as the dutiable value and domestic parts and parts previously imported against payment of import duties and taxes shall be disregarded.

Article 12: Currency conversion. Where the conversion of currency is necessary for the determination of the customs value, the average exchange rate in effect when the customs duties become payable, as published by the National Bank of Panama, shall be used.

Article 13: Samples of no commercial value. The valuation of samples of no commercial value cannot be based on the invoiced price, since they do not represent a sale, but a means of advertising the goods it is hoped to sell. These samples are generally used for display purposes or are given away.

The similar goods method seems the most appropriate since they can then be valued in accordance with the prices of the goods they exemplify, provided that possible differences in treatment for quantity or commercial level are taken into account.

If the interested party provides a pro forma invoice giving an indication of the price, customs may accept it if it matches the prices on the price lists or other records in their possession.

If the interested party does not provide any supporting documents, the similar goods method can be made more flexible by using Article 8 of Cabinet Decree No. 26 of 1 August 1996. In this case, it is possible to seek the prices corresponding to similar goods made by other manufacturers or from other countries.

Article 14: Package deals. If a collection of goods is purchased on the basis as a package deal and price is the only consideration, the goods shall be declared as follows:

- (a) **If different goods** are sold and invoiced globally, the invoiced price may be accepted as the total transaction value.

If the interested party has to divide up the global value to apportion it to various tariff headings with different duties:

- (i) If the sale is by kilos, the apportionment shall be accepted if based on weight;
- (ii) if the sale is by units, then the value may be apportioned among the tariff headings according to the units classified in each tariff heading.

No other mode of apportionment can be accepted as the price assigned to the different units would not correspond to the price obtained for the package.

- (b) **If the goods are identical**, the total invoice price may be accepted as a basis for valuation, since it corresponds to an actual sale satisfying the conditions of Cabinet Decision No. 26 of 1 July 1996.

Partial clearances can be valued by dividing the total value by the total number of units and multiplying the result by the number of units for which clearance is requested.

Article 15: Computer media with software. In the case of computer media with software, the transaction value shall constitute the primary basis of valuation and shall be used in accordance with the general regulations in force.

In the case of media without information (software), the transaction price shall be acceptable as the basis of valuation, unless for some reason the customs has to reject it and apply another valuation method, in accordance with the regulations in force.

Phonographic tapes, cassettes and disks, compact, laser or of any material and with any other recording system, shall pay on the basis of the transaction value, unless it is more appropriate to apply another of the valuation methods, in accordance with the regulations in force.

Film of any description and videotapes shall also be valued in the first instance on the basis of the transaction value and, where this is not possible, the other methods shall be applied until the appropriate value has been established, in accordance with the provisions in force.

Article 16: Domestic goods and goods previously imported against payment of import duties and taxes sent abroad for display in exhibitions and reimported. Domestic goods and goods previously imported against payment of import duties and taxes which are sent abroad to be exhibited or as a temporary export which will later be reimported in the same state, except for any normal wear and tear, shall be valued on the basis of their export value plus the transport and insurance costs of reimportation.

If they have suffered any damage during their stay outside the country, the appropriate percentage shall be deducted, in accordance with the regulations in force.

Article 17: Goods reimported after having been temporarily exported for manufacturing, processing or repair abroad. In all cases, the total value of the goods reimported should be declared, including the total costs of insurance and transport from the country in which the outward processing was carried out.

This general declaration shall be supplemented as follows:

- (a) **In the case of manufacturing and processing,** where it is a question of goods being sold and incorporated in the domestic goods or goods previously imported against payment of import duties and taxes, the cost of manufacturing or processing (comprising the cost of materials and labour, engineering, the profit of the enterprise that does the work and other work-related costs), including the freight and insurance costs for the return of the processed goods, shall be declared separately.

The tariff heading applicable in this case shall be that which corresponds to the description of the goods which return processed.

- (b) **In the case of repair,** the total value of the repairs plus the total transport and insurance costs for the return of the repaired goods from the country of repair to Panama shall likewise be declared.

The corresponding duties shall be assessed only on this declared total value and the percentage duty rate applied shall be that corresponding to the goods temporarily exported for repair.

Article 18: Interest. The interest yielded by a financing agreement for the goods shall not form part of the value if it is clearly indicated on the invoice, if the agreement is in writing and

provided that the price corresponds to an actual price and the interest does not exceed the level applied to transactions of the same type. It is immaterial who provides the financing and what method of valuation is applied.

Article 19: Commissions. If the goods are valued in accordance with Article 2 of Cabinet Decree No. 26 of 1 July 1996, selling commissions and brokerage shall be added to the invoiced price; for these purposes:

- (a) "selling commissions" means those commissions which the supplier must pay the agent who sells the goods he supplies on his behalf; and
- (b) "brokerage" means those percentages which the supplier pays an intermediary for arranging a sale.

When it is the buyer who pays a commission in order to acquire the goods he needs, it shall not be added to the invoiced price.

In brokered transactions, the services of the broker are usually shared between the seller and the buyer and the buyer's share shall be added, if it has not previously been included in the invoiced price.

Article 20: Selling commissions. Goods sold through a sales agent who undertakes to seek customers, take orders on behalf of a seller, store or stock the goods and deliver them when a deal is made cannot be purchased without paying the appropriate selling commission.

Normally, the buyer will pay it as part of the price charged by the seller and, accordingly, no adjustment is necessary.

However, if the commission has not been included in the invoiced price paid to the seller and the latter must pay it separately, it shall be added to the dutiable value.

Article 21: Buying commissions. Buying commission is paid by the customer or buyer in the country of importation for a service rendered by the buying agent. Accordingly, it does not form part of the value of the goods and therefore is not included in the invoice and does not form part of the dutiable price.

Article 22: Cash discount. Cash discounts actually granted by the seller shall be accepted because they correspond to the price actually paid or payable for the goods forming the subject of the transaction.

The discount shall be applicable even if payment has not been made at the time of valuation; nevertheless, if payment is made more than sixty (60) days after the completion of the transaction, it shall be deemed to be inapplicable.

Article 23: Quantity discounts. Quantity discounts shall be accepted only if it can be shown that the seller establishes his prices on the basis of a fixed schedule of quantities sold.

Quantity discounts shall be declared as follows:

- (a) **If there is a contract fixing a price for a particular quantity of goods,** the discount shall be acceptable whether the goods are dispatched in a single consignment or in separate consignments. What matters is the contract recording the total price for all the goods.

The partial invoices accompanying each shipment shall be accepted as presented; however, the total of the partial shipments must add up to the price of the total contract.

(b) **If there is a contract of sale with a discount for a specified quantity, that discount shall be accepted, except:**

- (i) Where the discount takes effect or increases when the buyer acquires a specified number of units as a result of successive purchases. A discount which takes effect or increases in this way shall be valid only for the importation being valued and not for previous purchases, even if the seller has included a general provision to that effect.

When the previous goods were valued, a fixed lower price had not been established but the possibility of a lower price had been agreed, which is not enough for this deduction to be applied to the goods in question.

- (ii) **If the discount** is granted on condition that the buyer takes a specified number of units during a predetermined period, only the reduction corresponding to the goods presented for valuation at that time shall be accepted. Customs shall reject the reductions made by the seller for previous purchases since a discount granted retrospectively cannot be applied to newly purchased goods.

Article 24: Fraudulent valuation. The valuation regulations require actual facts and the customs are empowered to check the truthfulness and accuracy of any information with which they are provided.

If within the period established for demanding the amounts due to the Treasury the customs discover that information is fraudulent, they may annul the value initially applied and require payment of the difference resulting from the definitive valuation.

In any event, the customs shall decide whether the fraudulent information constitutes an offence under Law No. 30 of 8 November 1984 and take the appropriate action.

Article 25: Annulment. Decisions concerning the customs valuation of goods issued prior to 1 August 1996 shall be rendered null and void in their entirety by Cabinet Decree No. 26 of the same date.

Legal basis: Law No. 16 of 29 August 1979, Law No. 41 of 1 July 1996, Cabinet Decree No. 26 of 1 August 1996.

For registration, communication and implementation.

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