

WORLD TRADE ORGANIZATION

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Committee on Customs Valuation

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT ON CUSTOMS VALUATION

Checklist of Issues

CANADA

The following communication, dated 18 May 1999, has been received from the Permanent Mission of Canada.

On behalf of my authorities, I have the pleasure of submitting up-dated Canadian answers to the questions contained in WTO document G/VAL/5 (checklist of issues). As indicated in the footnote in the attached Checklist, the only changes involve the numbering sequence for the valuation provisions in the *Customs Act*. Other than the change to the numbering system, there were no changes made to the text of the valuation provisions of the *Customs Act*.

CHECKLIST OF ISSUES¹

CANADA

1. Questions concerning Article 1:

(a) Sales between related persons:

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

Not other than provided for in the Agreement.

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

It is grounds for questioning the importer as to whether or not the price was influenced.

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

Subsection 48(2) of the *Customs Act*.

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

In subsection 48(3) of the *Customs Act*.

(b) Price of lost or damaged goods:

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

The special provisions are contained in sections 75 and 76 of the *Customs Act*, which apply to customs valuation and other customs matters.

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?

In subsection 47(3) of the *Customs Act*.

3. How has Article 5.2 been implemented?

In paragraph 51(2)(c) of the *Customs Act*.

¹ As a result of revisions made to the *Customs Act* in 1986, the numbering sequence for the valuation provisions of the *Customs Act* were changed. Other than this change to the numbering system, there were no changes made to the text of the valuation provisions of the *Customs Act*.

4. How has Article 6.2 been implemented?

If Canada Customs felt it necessary to examine records outside of Canada, under Article 6, Canada would request the permission of both the producer and the government of the country in question.

5. Questions concerning Article 7:

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

Section 53 of the *Customs Act*.

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

For Article 7 and all other Articles, in section 56 of the *Customs Act*.

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

No; there is no need to, as the customs value can only, by Canadian law, be determined by applying one of the methods provided for in Canadian law which reflects the methods of the Agreement.

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

Transportation charges incurred after the place of direct shipment to Canada do not form part of the customs value. Yes, ex-factory prices are acceptable if the factory is deemed to be the place of direct shipment.

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

The rate of exchange is not published by Customs but rather by the Bank of Canada.

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

Requirements to ensure confidentiality are contained in section 107 of the *Customs Act* which applies to customs valuation and other customs matters.

9. Questions regarding Article 11:

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

There has been a change in the number of departmental, administrative (internal) reviews available. One level has been removed. The result is that there is one level of departmental, administrative (internal) review; beyond that, there are still two levels of judicial review available, the Federal Court (Appeals) and the Supreme Court of Canada.

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

All decisions are subject to appeal; where the customs value has been redetermined by Customs, the decision itself contains advice regarding appeals.

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

(a) (i) The relevant national laws:

The *Customs Act* is published by the Government of Canada.

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

The *Valuation for Duty Regulations* are published by the Government of Canada.

(iii) the judicial decision and administrative rulings of general application relating to the Agreement:

All judicial decisions are published by the courts. The Department issues Interpretative Memoranda (D-Memos) on administrative rulings of general application.

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

These are all published by the Government of Canada.

Many of the above-mentioned publications are also available electronically on web sites maintained by the Government of Canada.

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

No.

11. Questions concerning Article 13:

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

It is provided for in subsection 32(2) of the *Customs Act* and in the *Accounting for Imported Goods and Payment of Duties Regulations*.

(b) Have additional explanations been laid down?

Guidelines are contained in *Customs Memorandum D17-1-13, "Interim Accounting"*.

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 56 of the *Customs Act*.

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

No.

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

Some have been incorporated into the *Customs Act*, others into the *Valuation for Duty Regulations* and the remaining notes into various published *Customs Memoranda*.

14. How have the provisions of the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods been implemented?

They have been implemented and published in *Customs Memorandum D13-3-13*.

15. For those countries applying paragraph 2 of the Decision on the Valuation of Carrier Media Bearing Software for Data-Processing Equipment, how have the provisions of this paragraph been implemented?

The Customs value includes an amount for the value of the data content. However, the duty payable is remitted under the authority of the *Computer Carrier Media Remission Order*. The end result is that duty is payable only on the cost or value of the carrier medium itself.
