

# WORLD TRADE ORGANIZATION

**G/VAL/N/2/CZE/1**  
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**Committee on Customs Valuation**

Original: English

## **INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT ON CUSTOMS VALUATION**

### Checklist of Issues

CZECH REPUBLIC

The following communication, dated 16 August 1999, has been received from the Permanent Mission of the Czech Republic.

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Please find enclosed the updated version of the responses by the Czech Republic to the Checklist of Issues circulated previously in the document G/VAL/N/1/CZE/2 of 18 October 1996.

Checklist of issues  
Czech Republic

1. Questions concerning Article 1:

(a) Sales between related persons:

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

The provisions in the Agreement as to sales between related persons are incorporated in Section 65, paragraph 3 and in Section 66 of the Customs Act No 13/1993 Collection of Laws, the Customs Act of December 15, 1992, as amended by the Act No 113/1997 Coll. of 24 April 1997. Decree of the Ministry of Finance of 4 June 1998 No 135/1998 Coll. implementing certain provisions of the Customs, as amended by the Decree No 124/1999 Coll. in Article 16 contains following interpretation of the term "members of the same family": "Persons shall be considered as members of the same family only if their mutual relationship is as:

- a) parents and children,
- b) siblings,
- c) cousins,
- d) grandparents and grandchildren,
- e) uncle or aunt and nephew or niece,
- f) father in law or mother in law and son in law or daughter in law,
- g) brother in law and daughter in law,
- h) husband and wife.

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

No - see Customs Act, Section 66, paragraph 3, first sentence.

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

Article 1.2(a) of the Agreement is incorporated in Section 66, paragraph 3, last sentence of Customs Act.

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

The provision in question of the Agreement is incorporated in Section 66, paragraphs 4 to 6 of 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 Czech Republic considers that the problem of lost or damaged goods is part procedural and part valuation.

From part of procedure this question is regulated by provision of § 288, of Customs Act, as follows.

"§ 288

(1) The Customs Office shall repay or remit an import or export duty if it determines that the amount of duty entered into the accounts pertains to goods rejected by the importer because of being defective or not complying with the terms of the contract on the basis of which they were imported. Defective goods shall also be deemed to include goods damaged prior to their release.

(2) The Customs Office shall repay or remit the duty provided that:

- a) the goods have not been used, except for such initial use as may be necessary to establish they are defective or do not comply with the terms and conditions of the contract, and
- b) the goods have been re-exported to another country.

(3) At the request of the person concerned, the Customs Office shall permit the goods to be destroyed under its direct supervision instead of being re-exported, or to be released, for the purposes of their subsequent re-exportation, into the transit procedure or customs warehousing procedure, or in a free customs zone or warehouse. For such purposes, the goods shall be deemed to be foreign goods.

(4) The Customs Office shall not repay or remit the import duty if the goods in question were temporarily imported for the purpose of testing before the submission of the customs declaration, except in cases when the fact that the goods were defective or did not comply with the terms and conditions of the contract could not have been normally detected in the course of the testing.

(5) The Customs Office shall repay or remit the import duty for any of the reasons listed in paragraph 1 if the appropriate application is submitted within twelve months following the date the debtor was notified of the amount of duty in question. In exceptional and justified cases, the Customs Office may extend this period of time."

From part of valuation this question is regulated by provision of § 74 paragraph 2:

"(2) The proportional division of the price actually paid or payable for the goods in question shall also be applied in the event of a partial loss or damage of the goods to be valued in transit and before their release for free circulation."

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?

The provision in question is incorporated in Section 71, paragraph 3 of Customs Act.

3. How has Article 5.2 been implemented?

The provision in question is incorporated in Section 70, paragraph 3 of Customs Act.

4. How has Article 6.2 been implemented?

The provision in question is incorporated in Section 71, paragraph 2 of Customs Act.

5. Questions concerning Article 7:

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

The provision in question is incorporated in § 72 of Customs Act and in Annex No 5 to the Decree No 135/1998 Coll., implementing certain provisions of the Customs Act, as amended by the Decree No 124/1999 Coll.

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

The provision of Article 7.3 is incorporated in § 73 paragraph 5 of the Customs Act.

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

The provision of Article 7.2 is incorporated in Section 72, paragraph 2 of Customs Act.

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

The provision in question is incorporated in Section 75, paragraph 1, letters e) and f) of Customs Act. In the Czech Republic the following elements are to be included in transaction value:

e) the costs and charges of transport and insurance of the imported goods to the place of their entry to the Czech Republic, *unless such charges have already been included in the price actually paid or payable,*

f) the loading, unloading and handling charges associated with the transport of the imported goods to the place of their entry to the Czech Republic, *unless such charges have already been included in the price actually paid or payable,*

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

Rate of exchange is published in

- a) dailies.
- b) teletext of Czech television.
- c) internet page of the Customs Administration of the Czech Republic.

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

The provision in question is protected in § 51, paragraph 7 of Customs Act:

"(7) Without the prior consent of the person concerned, the customs authorities shall not hand over or make available documents, data and information to third parties, except in cases where they are allowed to do so under special regulations or *according to an international agreement.*"

9. Questions concerning Article 11:

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

1. Administrative procedure

The provision in question is incorporated in § 104, paragraph 6 of the Customs Act:

"(6) The declarant may submit an appeal against a decision within one month of the day following the day such decision was delivered.; the provisions of paragraph 5 are not affected thereby."

According to provision of Article 48 of the Act No 337/1992 Coll. on the Administration of taxes and fees:

"Article 48

Appeals

(1) The recipient of a tax administration's decision concerning his tax base and tax liabilities may file an appeal against stipulations contained therein, as well as against other legal decisions, provided no legal provisions preclude the option to file an appeal and provided he has not waived his right to appeal during the proceedings or in writing.

(2) No individual appeals may be filed against decisions which precede court-ordered determinations of the tax base and tax liabilities of taxable entities, especially not against the tax administrator's requests under Art. 43. This applies in all the cases where the tax base and tax liability were reassessed, regardless whether or not actual proceedings did take place in order to determine a taxable entity's tax base and tax liability.

(3) An appeal may be filed in writing or verbally, always at the office of the administrator whose decision is being objected.

(4) An appeal must contain the following requisites:

- a) an exact identification of the tax administrator,
- b) an exact identification of the plaintiff,
- c) the case number; the number of the decision on the tax liability, if applicable; or another type of an exact identification of the relevant decision that in the subject of the appeal,
- d) definition of the discrepancy between legal provisions and the actual status quo, or other reasons proving the unfairness or unlawfulness of the decision appealed,
- e) proposition of the instruments of proof to support statements contained in the appeal, unless the grounds for the appeal are the legal discrepancies proper,
- f) proposal of ways to change or revoke the decision.

(5) Appeals may be filed within thirty days from the day following the delivery of the decision which the subject of the appeal, unless the provisions of this Act provide otherwise. In the event that the appeal filed does not contain all of the requisites above, the tax administrator notifies the plaintiff how to complement it and determines a time limit of at least fifteen days to do so. In the case that the appeal can be dismissed under Art. 49, Par. 2, the tax administrator's notification needs to contain but an enumeration of the missing requisites, thus explaining the grounds of the dismissal; the tax administrator may even decide to send no notification at all. If the plaintiff complies with requests contained in the tax administrator's notification, the appeal is considered to have been filed

in time and in accordance with the law. On the opposite event, the tax administrator terminates the appeal proceedings. An appeal against the termination of the proceedings is admissible.

(6) In the event that the tax administrator is unable to evaluate all of the information contained in the appeal at the given stage of proceedings, he complements the proceedings.

(7) The plaintiff may complement or alter his petition until a decision concerning the appeal proceedings is made.

(8) In the event that the plaintiff withdraws his appeal, he may not file another appeal on the same issue, even if the time limit for appeals has not expired.

(9) The recipient of a decision may waive his right to file an appeal for the entire period of the time limit for the filing of an appeal; the day he waives this right is the day the decision comes into effect.

(10) In the event that several taxable entities have the same right to file an appeal, but only some of them do (file one), the tax administrator has the responsibility to inform all the other taxable entities concerned and invites them to take a position on the issue, setting a time limit for their response. The time limit may not be shorter than fifteen days. Statements from the said entities received after this time period will not be considered. Any changes in a taxable entity's tax liability or the termination of his taxable activities due to a decision made in response to an appeal concerns all the taxable entities involved.

(11) An appeal based merely on objections against the grounds for a decision, without objecting to the implications contained therein, is not admissible.

(12) The filing of an appeal has no delaying effect, unless the provisions of this Act or special provisions provide otherwise."

## 2. Judicial procedure

After decision of appellate customs directorate which is in legal effect, further appeal may be made to the local civil Court according to Sections 247 to 250k of Code of Civil Court Procedure N° 99/1963 Collection of Laws).

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

The provision of Article 11.3 is not yet incorporated in Czech Acts; it will be incorporated to the Customs Act by the Act amending the Custom Act in connection with ratification of the revised Kyoto Convention.

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

(a)(i) the relevant national laws;

Regulations constituting the relevant Laws and regulations in the Czech Republic are published in the Collection of Laws of the Czech Republic and have been reproduced in this document.

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

Regulations constituting the relevant Laws and regulations in the Czech Republic are published in the Collection of Laws of the Czech Republic and have been reproduced in this document.

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

Decisions of constitutional Court have been made pursuant to implementation of the Agreement (in favour of the Decision of the Customs office, concerning evaluation of goods (barter business) by the Customs office.

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

Act of the Czech National Council of December 15, 1992 N<sup>o</sup>. 13/1993 Coll., the Customs Act, as amended by the Act No 113/1997 Coll, Decree of the Ministry of Finance of 4 June 1998 No 135/1998 Coll., implementing certain provisions of the Customs Act, Act No 337/1992 Coll., on the Administration of the taxes and fees, and the Code of Civil Court Procedure No 99/1963 Coll.. Such Legislation is all published in the Collection of Laws of the Czech Republic.

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

Other rules of the Agreement, especially Interpretative Notes, are now anticipated in the Czech customs rules (see Decree of the Ministry of Finance No 135/1998 Coll. dated June 4, 1998, implementing some of the provisions of the Customs Act, as amended by Decree No 124/1999 Coll. (article 15 to 23 and Annexes No 5 to No 10)

#### 11. Questions concerning Article 13:

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

The provision in question is incorporated in Section 123 of Customs Act: as follows:

#### "Section 123

At the declarant's request, the customs office may permit that the goods be disposed of prior to their release. The customs office shall grant the request in every case when the grounds for not releasing the goods are merely the necessity of determining the origin of the goods, the place of their dispatch, their, tariff classification or their customs value. Security shall be provided for any customs debt which does or could arise."

(b) Have additional explanations been laid down?

No.

#### 12. Questions concerning Article 16:

(a) Does the respective national legislation contain a provision requiring customs authorities to give an explanation in writing as to how the customs value was determined?

The provision in question is incorporated in § 73 paragraph 5 of the Customs Act.

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

See answer to 1(a) (iii) and to 5(b).

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

The provisions in question are incorporated in Customs legislation (see answer to 10 (b)).

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

The provision in question is incorporated in Section 76 paragraph 1, letter c) of Customs Act.

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 provision in question is incorporated in § 77 of Customs Act.

- For all questions listed above, an indication of the references is requested.

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