

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

Check-List of Issues

ECUADOR

The following communication, dated 27 October 2011, has been received from the Permanent Mission of Ecuador.

1. Questions concerning Article 1:

(a) Sales between related persons:

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

No.

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

No.

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

See Articles 13 and 14 of the Andean Community Regulation implementing Decision No. 571 on Customs Valuation of Imported Goods annexed to Resolution No. 846, published in Lima in Official Gazette of the Cartagena Agreement No. 1103 of 9 August 2004, which forms part of Ecuadorian law.

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

See Article 15 of the Andean Community Regulation implementing Decision No. 571 on Customs Valuation of Imported Goods annexed to Resolution No. 846, published in Lima in Official Gazette of the Cartagena Agreement No. 1103 of 9 August 2004, which forms part of Ecuadorian law.

(b) Price of lost or damaged goods:

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

Provisions to that effect are set forth in Article 4 of Andean Community General Secretariat (SGCAN) Resolution No. 961 ("Procedure relating to Special Customs Valuation Cases"), published in Official Gazette of the Cartagena Agreement No. 1248 of 10 October 2005. The Resolution forms part of Ecuadorian law.

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?

No importer has asked to reverse the order of application of Articles 5 and 6 of the WTO Agreement on Customs Valuation.

3. How has Article 5.2 been implemented?

This Article has not been implemented to date.

4. How has Article 6.2 been implemented?

This Article has not been implemented to date.

5. Questions concerning Article 7:

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

See Article 44 ("Procedure relating to the Application of the Last Recourse Method") of the Andean Community Regulation implementing Decision No. 571 on the Customs Valuation of Imported Goods annexed to Resolution No. 846, published in Lima in Official Gazette of the Cartagena Agreement No. 1103 of 9 August 2004, which forms part of Ecuadorian law.

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

Customs valuation in Ecuador is governed by the provisions of the WTO Agreement on Customs Valuation.

Accordingly, Article 7.3 of the Agreement is tacitly incorporated in Ecuador's customs legislation as an annex to Decision No. 571 of the Commission of the Andean Community (CAN), published in Ecuador in Official Journal No. 317 of 20 April 2004.

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

Yes. See Article 45 ("Prohibitions") of the Andean Community Regulation implementing Decision No. 571 on the Customs Valuation of Imported Goods annexed to Resolution No. 846, published in Lima in Official Gazette of the Cartagena Agreement No. 1103 of 9 August 2004, which forms part of Ecuadorian law.

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?

In accordance with Article 110 of the Organic Code of Production, Trade and Investment, published in Official Journal No. 351 of 29 December 2010, the tax base for customs duties is the transaction value of the imported goods, plus the cost of transport of such goods and additional charges associated with their transport to the port or place of importation, loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation, and the cost of insurance, as stipulated in Article 6 of Decision No. 571 of the Commission of the Andean Community (CAN), published in Ecuador in Official Journal No. 317 of 20 April 2004.

Hence, any terms of negotiation set out in the commercial invoice for the imported goods are accepted when the importer declares the value to the customs authorities.

The declarant must therefore specify on the relevant form the additions or deductions relating to the costs of transport and insurance of the imported goods that were negotiated at the time the commercial transaction took place.

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

The rate of exchange is published by the Central Bank of Ecuador and recorded daily in the National Customs Service computer system, which provides a search function for viewing the information.

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

Article 62 of the Community Regulation implementing Decision No. 571 on the Customs Value of Imported Goods annexed to Resolution 846, published in Lima in Official Gazette of the Cartagena Agreement No. 1103 of 9 August 2004, which forms part of Ecuadorian law, provides as follows:

"2. Pursuant to Article 10 of the WTO Agreement on Customs Valuation, information supplied that is of a particularly confidential nature or is provided on a confidential basis shall not be disclosed by the customs authority without the specific permission of the person or government that supplied it, except under a court order.

3. Private documents such as contracts, in particular contracts of sale, contracts pertaining to intellectual property, licensing and distribution, amongst others, and generally speaking any information relating to the negotiation and importation of the goods, shall be deemed confidential by nature and may not be made public, subject to the provisions of the preceding paragraph."

Moreover, Article 190 of the Organic Code of Production, Trade and Investment, published in Official Journal No. 351 of 29 December 2010 stipulates that the disclosure of information deemed confidential by the relevant authorities constitutes a customs offence subject to the corresponding penalty laid down in Article 191 of the Code.

9. Questions concerning Article 11:

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

Ecuador's customs legislation has always recognized the right of the importer or any other person to file a complaint or an administrative appeal. This is currently provided for in

Article 124 of the Organic Code of Production, Trade and Investment, published in Official Journal No. 351 of 29 December 2010.

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

Executive Decree No. 2428, published in Official Journal No. 536 of 18 March 2002 and containing the Regulations governing the Legal and Administrative System of the Executive Branch, provides that persons subject to administrative proceedings are required to file their complaints with the competent authority. Should a filed complaint be rejected by the Administration, the latter's decision may be appealed before an administrative or judicial court.

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

(a) (i) the relevant national laws;

Published in the Official Journal of Ecuador.

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

Published in the Official Journal of Ecuador and the Official Gazette of the Cartagena Agreement.

(iii) the judicial decision;

Decisions handed down by the National Court of Justice in the context of an appeal on a point of law are published in the Official Journal and are regularly entered in the Judicial Gazette.

and administrative rulings of general application relating to the Agreement;

Published in the Official Journal of Ecuador.

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

Published in the Official Journal of Ecuador.

Customs valuation legislation is also available on the web page of the National Customs Service of Ecuador.

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

It is planned to update the regulations relating to special valuation cases, which would encompass new cases that are currently being examined and studied.

11. Questions concerning Article 13:

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

Resolution No. 483 of the Directorate-General of Ecuador's National Customs Service of 25 August 2004 provides for the possibility of withdrawing the goods by posting a guarantee

and establishes the procedure for doing so, when the customs authorities have any doubts as to the declared value or if it is necessary to delay the final determination of the value of the goods.

(b) Have additional explanations been laid down?

Yes, in the above Resolution.

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?

Except for the provisions of the Agreement which Ecuador takes into account, there is no such obligation in domestic legislation.

However, complaints and the administrative act of valuation and tax adjustment require a technical report describing the valuation method used.

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

No.

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

The Interpretative Notes of the Agreement are contained in Decision No. 571 of the Commission of the Andean Community (CAN), published in Ecuador in Official Journal No. 317 of 20 April 2004.

It should be mentioned that pursuant to Article 3 of the Treaty Creating the Court of Justice of the Andean Community, decisions and resolutions issued under the Cartagena Agreement do not require any domestic law in order to be incorporated into domestic legislation:

"Decisions of the Andean Council of Foreign Ministers or of the Commission and Resolutions of the General Secretariat shall be directly applicable in Member Countries as of the date they are published in the Official Gazette of the Agreement, unless they indicate a later date."

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

Decision 3.1 of the WTO Committee on Customs Valuation applies. As stated in Article 31 of the Regulation implementing Decision No. 571 annexed to Resolution No. 846, published in Official Gazette of the Cartagena Agreement No. 1103, the customs value shall not include interest charges, which may be deducted from the price actually paid or payable by the buyer to the seller, provided that they are included in and distinct from the price, i.e. they have been invoiced by the seller and appear separately in the commercial documents.

- 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?**

Ecuador has not adopted the practice referred to in paragraph 2 of Decision 4.1 of the WTO Committee on Customs Valuation.
