

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

Checklist of Issues

KYRGYZ REPUBLIC

The following communication has been received from the Permanent Mission of the Kyrgyz Republic.

Customs value is currently implemented under the Customs Code of 30 July 1997, the Regulation on Methods for Determining Customs Value of Goods Imported to the Kyrgyz Republic (passed by the Order of the State Customs Committee #15-12/372 of 29 August 1998).

**1. Questions concerning Article 1**

(a) Sales between related persons:

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

Provisions of Article 174 of the Customs Code concerning sales between related persons are consistent with Articles 1 and 15.4 of the Customs Valuation Agreement.

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

According to the provisions of paragraph 3 of Article 174 of the Customs Code, intercompany prices are not considered as a *prima facie* basis for regarding the respective prices as being influenced.

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

Article 174 of the Customs Code provides that if a customs body has grounds for considering that the relationship influenced the price, it shall provide recommendations to the declarant (in writing if the declarant so requests). In such a case, the declarant is given 90 days to respond.

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

Provisions of Article 1.2(b) of the Customs Valuation Agreement are fully implemented under Paragraph 3 of Article 174 of the Customs Code. The provisions of this Article provide importers with the opportunity to submit information to the customs administration, demonstrating that the declared value closely approximates to one of the following, occurring at or about the same time: (i) the customs value of identical or similar merchandise in sales between unrelated buyers and sellers; (ii) the customs value of identical or similar goods determined according to the deductive value method; (iii) the customs value of identical or similar goods determined according to the computed value method.

(b) Price of lost or damaged goods:

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

The practice under the current legislation is that the purchase price or value of damaged goods is reduced to the extent of the damage, as determined by an *ad hoc* committee consisting of representatives of the States Customs Inspectorate and the declarant, as well as an independent expert. This practice will continue under the proposed legislation. No reduction in duties is given for the goods, which have been declared and included in the invoice, but are not found upon customs examination, unless the importer can satisfy the committee that the goods were lost before importation into Kyrgyzstan for no fault of the importer.

**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?**

Article 173 of the Customs Code provides that the methods of Articles 5 and 6 of the Customs Valuation Agreement may, at importer's option, be used in any sequence.

**3. How has Article 5.2 been implemented?**

Article 5.2 of the CVA, concerning the use of the deductive value after further processing is implemented in Paragraph 5 of Article 177 of the Customs Code.

**4. How has Article 6.2 been implemented?**

Article 6.2 of the CVA, barring compulsory production of, or access to, records of any person not resident in the Kyrgyz Republic for the purposes of determining a computed value is implemented in the section Method of Determining Customs Value on the Basis of Computed Value (the 5<sup>th</sup> Method) of the Regulation on Methods for Determining Customs Value of Goods Imported to the Kyrgyz Republic (passed by the Order of the State Customs Committee #15-12/372 of 29 August 1998). Customs bodies may not require or compel any person, not resident of the Kyrgyz Republic, to furnish its records for the purposes of determining a computed value unless the foreign producer agrees to that.

**5. Questions concerning Article 7:**

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

Article 179 of the Customs Code provides for a "provisional" method, when other methods may not be applied, describing it as the "customs value to be determined by taking into account world practice". The Implementing Regulation on Methods for Determining Customs Value of Goods

Imported to the Kyrgyz Republic (passed by the Order of the State Customs Committee #15-12/372 of 29 August 1998) provides that under "the provisional method" custom value is determined by using reasonable means consistent with the principles and general provisions of the Customs Valuation Agreement and of Article VII of GATT 1994. General principles of the Agreement and Article VII GATT which are subject to observance in applying "the provisional method" may refer to the following:

- valuation should be based, to the maximum extent possible, on the transaction value of imported goods, the use of the cost [price] based on actual estimation (i.e. prices at which the imported goods are sold in the country in the course of usual trade under the conditions of competition);
  - unification of valuation, providing uniformity in implementing valuation of goods for customs purposes;
  - fair and impartial valuation, i.e. aspiration for finding an actual and real value of imported goods; adjustments being made should provide a maximum real valuation;
  - simplicity and objectiveness of valuation criteria;
  - compatibility with commercial practice, inadmissibility of creating situations, or application of the valuation methods which never occur in commercial practice;
  - if value cannot be determined on the basis of method 1 – the use of the closest equivalents (alternative values);
  - value of domestic goods or arbitrary (fictitious) prices shall not be used as the basis for valuation.
- (b) What is the provision for informing the importer of the customs value determined under Article 7?

Under Article 172 of the Customs Code customs bodies must, upon request of the importer, provide a written explanation of how the customs value of imported goods was determined. According to Implementing Resolution #15-12/372 of 29 August 1998, importer shall submit a request in writing within 90 days after the goods are released.

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

All of the prohibitions found in Article 7.2 of the Customs Valuation Agreement are included in Article 179 of the Customs Code.

**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?**

Paragraph 1 of Article 174 of the Customs Code provides for the addition of the costs specified in Article 8.2 of the CVA incurred on goods up to the time they cross the customs border of the Kyrgyz Republic in determining customs value, when they are not included in the purchase price.

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

The rate of exchange is published by the National Bank of the Kyrgyz Republic in newspapers of general circulation. For the purpose of determining the customs value, a foreign

currency is converted into the currency of the Kyrgyz Republic at the rate of exchange in effect on the date of receipt of the customs declaration for the goods.

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

Confidentiality is ensured in Article 170 of the Customs Code, except for certain information stipulated in the legislation of the Kyrgyz Republic which may be required by law enforcement and judicial authorities and, for which purposes it cannot be treated as a commercial secret or, as confidential.

**9. Questions concerning Article 11:**

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

Article 172 and Chapters 61, 62 and 63 of the Customs Code provide for the right of any aggrieved person to challenge decisions of the SCI concerning the customs value in accordance with the procedure established by the legislation of the Kyrgyz Republic, which provides for both administrative and judicial appeals.

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

Currently, the national legislation does not provide for the importer's right to be informed of further appeal. However, in practice customs bodies in all cases inform the importer of his right to further appeal in courts.

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

(a)(i) *The relevant national laws*

Article 3 of the Law on Publication of Laws #9 of 14 February 1997, as amended, requires that laws relating, *inter alia*, to valuation of goods for customs purposes, be published and enter into force not earlier than 15 days from the date of publication. Article 409 of the Customs Code requires the State Customs Inspectorate to publish the most important relevant national laws and regulations in the mass media, while Article 410 requires local customs bodies to publicize the basic provisions of those laws. In addition, under Article 405, copies of already-published texts of laws, regulations, and customs directives will be presented to the interested persons by the State Customs Inspectorate upon payment of a fee in the amount established by the Ministry of Finance.

(ii) *The regulations concerning the application of the Agreement*

Article 39 of the Law on Normative Legal Acts #34 of 1 July 1996, as amended, requires that laws and regulations relating, *inter alia*, to valuation of goods for customs purposes, be published and enter into force not earlier than after 15 days from the date of publication (see the response to the question above).

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

Legislation of the Kyrgyz Republic does not require publication of judicial rulings. Note, that according to the Kyrgyz legislation judicial decisions are not of general application.

- (iv) *General or specific laws being referred to in the rules of implementation or application*

Article 3 of the Law on Publication of Laws #9 of 14 February 1997, as amended, requires that all laws referred to in Article X of GATT 1994, be published.

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

See the response to the question above.

#### **11. Questions concerning Article 13**

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

Article 171 of the Customs Code permits importers to receive and use imported goods under pledge, guaranty, or payment of the estimated duties, pending final determination of value.

- (b) Have additional explanations been laid down?

Additional explanations have been laid down in implementing instructions for Article 166.

#### **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?

Under Article 172 of the Customs Code customs bodies must, upon request of the importer, provide a written explanation of how the customs value of imported goods was determined.

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

According to Implementing Regulation #15-12/372 of 29 August 1998, the importer shall submit the above-mentioned request in writing within 90 days after the goods are released.

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

Interpretative Notes have been included in Implementing Regulation #15-12/372 of 29 August 1998.

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

According to the Section "Special Provisions" of Regulation #15-12/372 of 29 August 1998, interest charges are not included in the customs value of imported goods, provided that: (i) duties are separated from the price, actually paid or payable; (ii) the financial agreement was concluded in writing; (iii) on the requirement of customs bodies the declarant must submit authentic information proved by documents, that such goods are actually sold at the price declared as the price actually paid or payable and the given interest rate doesn't exceed the usual interest for such deals, which prevail in the country, where and when finance was provided.

**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?**

According to the Section "Special Provisions" of Regulation #15-12/372 of 29 August 1998, in determining customs value of the imported carrier media bearing data or instructions, only the cost of the carrier medium itself is taken into account.

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