

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

Check-List of Issues

PERU

The following communication, dated 22 October 2010, is being circulated at the request of the delegation of Peru.

1. Questions concerning Article 1:

(a) Sales between related persons:

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

Article 13.4 of Andean Community Resolution 846 specifies what constitutes membership of the "same family", a rule that applies in Peru since it belongs to the Community.

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

No, only those established by the Agreement.

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

Supreme Decree No. 186-99-EF and amendments thereto, where there is reasonable doubt.

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

As set forth in the Agreement.

(b) Price of lost or damaged goods:

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

Yes, Supreme Decree No. 009-2004-EF provides for a maximum depreciation of 50 per cent in the case of used or damaged goods (except for used vehicles), when the customs value is determined using the fallback method.

Moreover, Peru is required to comply with Andean Community law, which includes Resolution 961 on Special Customs Valuation Cases and laying down special rules in the case of spoilt, damaged or deteriorated goods.

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?

Andean Community Decision 571 on Customs Valuation of Imported Goods provides for reversal of the order of application of Articles 5 and 6, if the importer so requests and the customs administration so agrees.

3. How has Article 5.2 been implemented?

Andean Community Decision 571 on Customs Valuation of Imported Goods provides for the application of Article 5.2 whether or not the importer so requests.

4. How has Article 6.2 been implemented?

Provision has been made for its implementation in accordance with the Agreement.

5. Questions concerning Article 7:

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

At Community level, Resolution 961 on Special Customs Valuation Cases provides clarification for the purposes of applying the fallback method. Peruvian legislation also provides clarification for the application of this method to imports of goods susceptible of fraud (see Supreme Decrees Nos. 098-2002-EF and 009-2004-EF).

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

The provisions are of a general nature as stipulated in domestic legislation (Supreme Decree No. 186-99-EF and amendments thereto) and apply to all cases in which value is determined by the customs administration.

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

Yes, at Community level in Articles 44 and 45 of Resolution 846 and at domestic level in Article 22 of Supreme Decree No. 186-99-EF.

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?

Customs value consists of the f.o.b., freight and insurance value, which includes the value actually paid or payable plus the adjustments under Article 8 of the Agreement. INCOTERM Ex-Work prices are accepted, but the duties are calculated on a c.i.f. equivalent basis plus the Article 8 adjustments, where applicable.

At Community level, Article 6 of Decision 571 has incorporated the provisions of Article 8.2 of the Agreement.

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

The exchange rate is published daily by the Banking and Insurance Supervisory Authority and can be viewed on the SUNAT/Aduanas web page (<http://www.sunat.gob.pe/>).

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

As stipulated in the Agreement.

9. Questions concerning Article 11:

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

Matters relating to the determination of customs value are governed by general rules that apply to any tax-related decision by the customs administration. These rules provide for the filing of administrative claims and appeals; the latter are heard by an independent administrative body (Fiscal Tribunal), pursuant to Article 11 of the Agreement. Moreover, the administration's final decision may be challenged before a judicial authority by bringing an action under administrative law, also in accordance with Article 11.

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

In addition to the highest ranking legislation establishing such a right, which is published in the Official Journal, the customs administration has adopted procedures to consolidate all aspects relating to the determination of customs value, which expressly provide for a right of appeal by the importer. These rules are publicly available on the National Customs web page (<http://www.sunat.gob.pe/>).

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

(a) (i) the relevant national laws;

Published in the Official Journal (<http://www.elperuano.com.pe/>).

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

Published in the Official Journal (<http://www.elperuano.com.pe/>).

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

Published in the Official Journal (<http://www.elperuano.com.pe/>).

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

Published in the Official Journal (<http://www.elperuano.com.pe/>).

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

Not for the time being.

11. Questions concerning Article 13:

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

Article 12 of the Valuation Regulations approved by Supreme Decree No. 186-99-EF regulates this obligation.

- (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?**

Yes, in the Valuation Regulations approved by Supreme Decree No. 186-99-EF.

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

No.

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

The WTO Agreement on Customs Valuation, together with its Interpretative Notes, has been approved by Legislative Resolution No. 26407 of the Democratic Constitutional Congress of Peru. Furthermore, Andean Decision 378 of 1995 adopting the WTO Agreement on Customs Valuation incorporates the Interpretative Notes to the Agreement.

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

The decisions of the Committee on Customs Valuation of the World Trade Organization (WTO) and the instruments of the Technical Committee on Customs Valuation (Brussels) have been incorporated in domestic legislation by Article 2 of the Valuation Regulations approved by Supreme Decree No. 186-99-EF and amended by Supreme Decree No. 098-2002-EF. Article 31 of Resolution 846 contains a provision on interest charges, pursuant to Decision 3.1 on the Treatment of Interest Charges in the Customs Value of Imported Goods.

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?

Supreme Decree No. 128-99-EF, which incorporates the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, was repealed as of 1 January 2009 by Supreme Decree No. 004-2009-EF, which regulates the determination of the value of

carrier media bearing digital products, including software, and stipulates that consideration will be given only to the cost or value of the carrier medium, irrespective of the value of the digital products stored.
