

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

Checklist of issues

THAILAND

The following communication, dated 2 October 2003, has been received from the Permanent Mission of Thailand.

1. Questions concerning Article 1:

(a) Sales between related persons:

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

Yes, sales between related persons are subject to regulation 4, regulation 14(4), regulation 15 and regulation 16 of the Ministerial Regulations No. 132 (B.E. 2543).

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

No, the fact of intercompany shall not in itself be *prima facie* considered as grounds for regarding the respective prices as being influenced. The circumstance surrounding the sale shall be examined. If the relationship does not influence the price, the transaction value shall be accepted.

(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))?*

The provisions for giving the communication of the afore-mentioned grounds, for the time being, are paragraph 2 of regulation 15 of the Ministerial Regulations No. 132 (B.E. 2543). Even though such provisions do not specifically require communication to be done "in writing" but in practice the competent officer shall communicate such grounds to the importer in writing since it is the only acceptable official evidence showing that the communication has been done. However, the provision stipulating that information to be given "in writing" will be added to the Ministerial Regulations and the Customs Code of Conduct by the end of September 2003.

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

Article 1.2(b) has been implemented by means of regulation 3 and regulations 15-23 of the Ministerial Regulations No. 132 (B.E. 2543) and the Customs Department Code of Conduct B.E. 2544.

(b) Price of lost or damaged goods:

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

The provisions or practical arrangements concerning the valuation of lost or damaged goods are under section 10*bis* and section 95 to the Customs Act B.E. 2469.

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 implementation of the provision allowing the importer an option to reverse the order of application of Article 5 and 6 has been done under the provisions of regulation 3 (paragraph 2) and regulations 24-25 of the Ministerial Regulations No. 132 (B.E. 2543).

3. How has Article 5.2 been implemented?

Article 5.2 has been implemented by regulations 25-27 of the Ministerial Regulation No. 132 (B.E. 2543).

4. How has Article 6.2 been implemented?

Article 6.2 has been implemented by regulations 28-29 of the Ministerial Regulation No. 132 (B.E. 2543)

5. Questions concerning Article 7:

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

The provisions have been made for making value determinations pursuant to Article 7 are regulations 30-31 of the Ministerial Regulation No. 132 (B.E. 2543).

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

The provision for informing the importer of the customs value determined under Article 7 is under the Customs Department Code of Conduct B.E. 2544.

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

Yes, they are under regulation 31 of the Ministerial Regulation No. 132 (B.E. 2543).

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?

The options found in Article 8.2 have been handled by means of regulation 9 of the Ministerial Regulation No. 132 (B.E. 2543). No, the ex-factory price is not accepted in the case of an F.O.B. application.

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

The rate of exchange is published as a public announcement at the Customs Department headquarters and every Regional Customs Office, and on the Customs Department's website.

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

The protection of confidential information, as required by Article 10, is conferred upon by the Trade Secrets Act B.E. 2545. In addition to the Trade Secrets Act, the Customs Department is considering the issuance of Customs Department's Rules specifying the procedure for officers in keeping and maintaining confidential information.

9. Questions concerning Article 11:

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

The rights of appeal are open to both the importer and the exporter under the provision of section 112 sex of the Customs Act (No.17) B.E. 2543 and the definition of importer and exporter is given in section 2 of the Customs Act B.E. 2469.

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

The right to further appeal is informed through the Decision Informing Form, in the footnote of the form, of which the importer is informed the result of his appeal.

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

(a)

(i) *the relevant national laws:*

The Customs Act B.E. 2469 and the Customs Act (No. 17) B.E. 2543 are published in the Government Gazette. They are also published on the Internet on the website of the Customs Department (www.customs.go.th) and that of the Council of State (www.krisdika.go.th). The hard copy form of the Acts is also available for sale at the Customs Department.

(b)

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

The Ministerial Regulation No. 132 (B.E. 2543) is published in the Government Gazette. It is also published on the website of the Customs Department.

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

The judicial decisions are published and available at the Court of Justice. The administrative ruling of general application related to the Agreement is in the process of being compiled and will be published on the website of the Customs Department soon.

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

The Customs Act (No. 9) B.E. 2482 and the Customs Act (No.10) B.E. 2483 are published in the Government Gazette and also available on the website of the Customs Department.

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

Yes, the publication of further rules is anticipated. The topics which they would cover are the inclusion of Annex III to the Agreement on Implementation of Article VII of GATT 1994 and the provision confirming that the "communication" of grounds under the Ministerial Regulations must be done in writing.

11. Questions concerning Article 13:

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

The obligation of Article 13 (last sentence) is being dealt with by the provision under section 112 of the Customs Act (No. 17) B.E. 2543.

- (b) Have additional explanations been laid down?

Yes, the additional explanations have been laid down in the Customs Code of Conduct B.E. 2544.

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?

For the time being, the current respective national legislation contains no provision requiring customs authorities to give an explanation in writing as to how the customs value was determined, but such provision will be introduced into the Ministerial Regulation by the end of 2003.

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

As mentioned in (a) above.

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

The interpretative Notes of the Agreement have been included by the provision of regulation 6 of the Ministerial Regulation No. 132 (B.E. 2543).

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

The provisions of the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods have been implemented by ways of common practice of customs valuation which is based on the price actually paid or payable for the imported goods when sold for export to the Kingdom in accordance with the provision of the Agreement.

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 decision does not apply to Thailand.
