

ORGANISATION MONDIALE DU COMMERCE

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Comité de l'évaluation en douane

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NOTIFICATION AU TITRE DE L'ARTICLE 22 DE L'ACCORD SUR LA MISE EN ŒUVRE DE L'ARTICLE VII DE L'ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS ET LE COMMERCE DE 1994

KOWEÏT

La communication ci-après, datée du 16 novembre 2007, est distribuée à la demande de la délégation du Koweït.

La Mission permanente de l'État du Koweït a l'honneur de notifier au Comité de l'évaluation en douane, conformément à l'article 22:2 de l'Accord sur la mise en œuvre de l'article VII du GATT de 1994, les décrets ci-après¹:

1. Décret princier n° 10/2003 portant promulgation de la Loi sur le régime douanier commun des États du CCG (articles 26 à 29 et 61 et 62 ainsi que les notes explicatives, sections IV et VI) en vue de mettre en œuvre les articles 11, 12 et 13 de l'Accord sur l'évaluation en douane.
2. Décret princier n° 200/2003 portant promulgation du Règlement d'application de la Loi sur le régime douanier commun des États du CCG, article premier intitulé "Valeur en douane des marchandises".

Prière de noter ce qui suit:

- Cette loi est identique à la Loi sur le régime douanier commun des États du CCG, à son Règlement d'application et à ses notes explicatives (2003).
- La mise en œuvre de l'Accord sur l'évaluation en douane a suivi la promulgation de la Loi sur le régime douanier commun du CCG par le Décret princier (n° 10/2003) de septembre 2003.
- Les articles concernant la mise en œuvre de l'Accord sur l'évaluation en douane sont les articles 26 à 29, 61 et 62, ainsi que l'article premier du Règlement d'application.
- L'Administration générale des douanes du Koweït a mis en œuvre les articles 11, 12 et 13 de l'Accord sur l'évaluation en douane comme suit:

¹ En anglais seulement.

a) Article 11

Cet article est mis en œuvre en vertu de l'article 61 intitulé "Ajustement de la valeur" de la Loi sur le régime douanier commun des États du CCG par l'établissement d'un comité indépendant dont font partie des représentants de la Chambre de commerce et d'industrie du Koweït et qui est chargé de régler tout différend entre les douanes et les importateurs relatif à la valeur en douane.

En outre, l'article 61 garantit aux importateurs le droit de faire appel devant le comité de l'évaluation et celui de faire appel devant un tribunal des décisions rendues par le comité.

b) Article 12

Cet article est mis en œuvre par la publication de toutes les lois, tous les règlements et décisions administratives d'application générale ayant trait au commerce.

c) Article 13

L'Administration générale des douanes du Koweït a mis en œuvre cet article au moyen de l'article 62 b) de la Loi sur le régime douanier commun du CCG qui autorise la mise en circulation des marchandises objet du différend, sauf interdiction, après dépôt d'une garantie d'un montant équivalant à la somme des droits de douane déterminés par le bureau des douanes.

STATE OF KUWAIT
Law No. 10/2003 on Issuing the
Unified Customs Law of GCC States

- After reviewing the Constitution,
- Based on Law No. 16/1960 on the issuance of the Criminal Law and its amending Codes ,
- With regard to the Law No.17/1960 on the issuance of Procedural and Criminal Procedure law and its amending Codes,
- According to the Amiri decree On Law No. 13/1980 concerning Customs,
- Pursuant to the Law No. 44/1981 on the Approval of AGCC Statute,
- Based on Law No. 26/1995 concerning Free Zones,
- With regard to Law No. 56/1996 on the issuance of the Industry law,
- Pursuant to Law No. 5/2003 on the Approval of the GCC Unified Economic Agreement,
- According to AGCC Supreme Council's decision taken at its 22nd Session held in Muskat, Oman between 30th - 31st December 2001, regarding the Adoption of AGCC Unified Customs Law and its Explanatory Note,
- And based on AGCC Supreme Council's decision taken at its 23rd Session held in Doha, Qatar between 21st - 22nd December 2002, on declaring the Foundation of AGCC Customs Union.

Therefore, the National Assembly has approved the following Law, as we thereafter endorse and issue:

Article 1

The Unified Customs Law of GCC States by its attached Text has been approved.

Article 2

All goods that enter Kuwait's territory shall submit to the levied customs duties and other charges at the rate of 5% of its value, in addition to CIF and other expenses set through the concerned Minister's decision until the port of arrival.

Some imported goods may be exempted from the levied customs duties through an Exclusion Amiri Decree. In addition, it is possible to lay down other categories of customs duties by an Amiri Decree that must not exceed the one levied in the AGCC States.

Article 3

After three months since the implementation of AGCC Unified Tariff and according to the measures agreed upon between the AGCC States and by an Amiri Decree, the Industrial Establishments shall be exempted from the levied customs duties on all their imports of machines, equipments, spare parts, primary and semi-manufactured raw materials, packing and packaging materials necessary for commencing the industrial production.

During the mentioned period of three months, the Industrial Establishments exemptions provided for in the provisions of Industry Law No. 56/1996 provisions shall be effective.

Article 4

The Amiri Decree on Law No. 13/1980 referred to shall be cancelled, and the attached Unified Customs Law of GCC States shall be in force.

Moreover, and without prejudice to the provisions of the AGCC Unified Customs Law and its Rules of Implementation, and until the issuance of the Resolution applying it, the operated rules and regulations before it comes into force shall be effective.

Article 5

The Prime Minister and all Ministers, each in his field, must implement this Law, and shall be effective since the date of applying its Rules of Implementation.

The Amir of Kuwait

H.H. Sheikh Jaber Al-Ahmad Al-Subah

Issued at Bayan Palace,
On 22nd April

**Part of Unified Customs Regulation "Law"
of the GCC States
and
Explanatory Notes Thereof**

Note: Enclose article From 26-29 and 61-62 of the Unified Customs Law of GCC States in order to implement Articles 11, 12, and 13 of the CUSTOM VALUATION AGREEMENT of the WTO

Section IV

Distinguishing Elements of the Goods

(Origin, Value, type)

Article 26

The value for customs purposes shall be calculated according to the rules and principles set forth in the rules of implementation.

Article 27

Acceptance of the value as a distinctive element of the goods requires the following:

1. Any customs declaration shall be accompanied by a detail original invoice and the director general or his representative may allow finalization of the clearance procedures without presentation of the authenticated original invoices and the required documents against an undertaking to produce them within a period not to exceed 90 days from the date of undertaking.
2. The value of the goods shall be proved by producing all original invoices and documents reflecting the value according to the rules set forth in Article 26.
3. The customs office may require all documents, contracts, correspondence and other relevant documents without having to accept all that is stated in them or in the invoices themselves.
4. The Administration may request Arabic translation of the invoices issued in a foreign language showing details of the goods in accordance with the customs tariff as well as the other documents, if so required.

Article 28

The value of the exported goods is that indicated in the customs declaration plus all the costs until arrival of the goods at the customs office.

Article 29

Goods not mentioned in the customs tariff (Harmonized System) and the explanatory notes are to be classified according to the classification advice given by the World Customs Organization. Goods that fall under national subheadings in the customs tariff are to be classified within the context of the Unified Customs Tariff of the member States of the Council.

SECTION VI

Stages of customs clearance

Chapter IV: Adjustment of the value

Article 61

A valuation committee composed of officers from the administration shall be established by a resolution of the director general to settle the disputes arising between the customs office and the persons concerned about the value of the imported goods. Such committee may seek assistance of experts at its discretion.

Without prejudice to the importer's right to appeal to court, the importer may appeal before the valuation committee against the decisions of increased value within fifteen days following the registration of the customs declaration or from the date of the valuation notice sent to him by registered mail. Decisions of this committee shall be taken by majority and shall be effective once approved by the director general. The importer shall be informed in writing of the decision taken by the committee concerning his complaint. Such decision shall be reasonable.

Article 62

- (a) Should a dispute arise between the competent customs officer and the owner of the goods about the value of the goods due to discrepancy in description, origin or any other reason, the matter shall be referred to the director for settlement. If the director approves the opinion of the customs officer but the owner of the goods does not accept such opinion, the matter shall be referred to the director general for settlement of dispute or for referral to the valuation committee.
- (b) The director may release the goods in dispute, if not prohibited, after collecting a deposit in an amount equivalent to the sum of the customs duties and taxes determined by the customs office. Samples of the goods shall be temporarily maintained for reference when necessary; such samples shall be returned to the owner of the goods unless they are consumed for inspection and analysis purposes.

Explanatory Notes

To the Unified Customs Regulation "Law"

Of the Cooperation Council for the Arab States of the Gulf

Section IV

The Distinguishing Elements of the Goods

This Section provides clarification and description of the distinguishing elements of the goods (origin, value, type) and stipulates that imported goods shall be subject to the proof of origin according to the rules agreed on within the framework of the international and regional economic organizations. The provision of Article (26) of the regulation "Law" and the provision of Article (1) of the Rules of Implementation are in line with the provisions of the WTO Valuation Agreement where calculation of the value of goods for customs purposes is determined according to the provisions and principles prescribed in detail in the Rules of Implementation of the Regulation "Law". Article (27) specifies the documents to be attached with the customs declaration and the nature of these documents and the treatment of the cases where the importer fails to submit such documents to

customs, whereas Article (28) provides that the value of the exported goods shall be their value prevailing at the time of registering the customs declaration plus all charges incurred until arrival of the goods to the customs office. Article (29) provides that the goods that are not mentioned in the customs tariff nomenclature and the explanatory notes thereof shall be classified according to the classification advice issued by the World Customs Organization which the approved body in respect to the international classification. However, goods falling under national subheadings of the customs tariff beyond six digits are classified within the framework of the GCC as the unified Customs Tariff for the Classification and Coding of Commodities is in line with the Harmonized System in force.

Section (VI)

Stages of the Customs Clearance

This Section elucidates in detail the stages of the customs clearance beginning with the lodgment of the customs declaration according to the forms approved within the frame of the Council and that the director general is empowered to specify the documents to be attached with the customs declarations and the details to be contained therein and the clearance cases without production of such documents gains cash or bank guarantees or undertakings according to the conditions prescribed by the director general. The regulation "Law" permits the owners of goods or their representatives to examine their goods prior to the lodgment of the customs declaration and to have access to the customs declarations and documents to which no other persons can have access except the competent judicial and official authorities.

Article (61) discusses the formation of valuation committee composed of the administration's employees under a resolution issued by the director general. Such committee is specialized in the settlement of the disputes arising between the customs office and the importers concerning the valuation of the imported goods and the committee may seek assistance of experts according to the measures and procedures provided for in Article (26) of this regulation "Law" without prejudice of the importer's right to appeal before the court.

Article (62) deals with the disputes between the customs officer and the owner of the goods concerning the valuation of the goods and provides that the dispute shall be referred to the director general for settlement or to the Valuation Settlement Committee. This Article also provides for the right of the director to release the goods against the guarantees provided for in this Article and the conditions thereof.

STATE OF KUWAIT

**Amiri Decree No. 200/2003 Regarding the Issuance of
Rules of Implementation to Law No. 10/2003 on
Unified Customs Law of GCC Member States**

- After reviewing the Constitution,
- Based on law No. 5/2003 on approving the Unified Economic Agreement between GCC Member States,
- With regard to the law No.10/2003 on issuing the Unified Customs Law of GCC Member States,
- According to AGCC Supreme Council's decision taken at its 22nd Session held in Muskat, Oman between 30th - 31st December 2001, on approving the Rules of Implementation to Unified Customs Law of GCC Member States,
- Pursuant to the presentation of the Minister of Finance,
- And after the approval of Council of Ministers,

We lay down the following:

Article 1

The rules of implementation of law No. 10/2003 regarding issuing the unified customs law of GCC Member States has be approved in its enclosed text form.

Article 2

All texts that contradict the provisions of this Decree shall be cancelled.

Article 3

Ministers - everyone in his field – must implement this Decree. It shall be published in the official gazette and enter into force from 1st September 2003.

The Amir of Kuwait
Jaber Al- Ahamad Al- Sabah

Prime Minister
Sabah Al-Ahmad al-Jaber Al-Sabah

Minister of Finance
Mahmood Abdulkhaliq Al-Noory

Issued at Bayan Palace,
On 24th August 2003

**Part of Rules of Implementation
of the Unified Customs Regulation "Law" of the
Cooperation Council of the Arab States of the Gulf

(CUSTOM VALUATION)**

Note: Enclose rules of implementation of Articles From 26-29 and 61-62 of the Unified Customs Law of GCC States in order to implement Articles 11, 12, and 13 of the CUSTOM VALUATION AGREEMENT of the WTO.

Rules of Implementation
of the Unified Customs Regulation "Law"
of the Cooperation Council for the Arab States of the Gulf

I. Value of goods for customs purposes

Based on the provisions of Article (26) of the Unified Customs Regulation "Law" of the GCC States, the value of goods for customs purposes shall be according to the following rules and principles:

Article (1)

General Provisions:

1. The importer may clear his goods after payment of the customs taxes "duties" under cash deposit, if the final determination of the value is prolonged.
2. The importer may obtain, upon a written request, a written clarification of the method used in determining the customs value of his goods.
3. The importer or any person liable for payment of the customs taxes "duties" may appeal against the determined customs value, without penalty.
4. The confidential information or the information provided on confidential basis for valuation purposes shall be treated as top confidential and may not be disclosed unless within the limit required for court procedures.
5. Freight, insurance and other relevant charges shall be added up to the customs value of the imported goods until arrival to the port of destination in the GCC States.
6. The time of payment of the customs taxes "duties" shall be the time approved for currency exchange rate.
7. In determining the transaction value, no discounts or deductions of the payable or actually paid price shall be considered if such discounts/deductions are made between the buyer and seller after the date of importation of the goods. Also, no credit balances pertaining to previous consignments shall be considered when determining the customs value of the goods being valued.
8. The Valuation Agreement shall be the reference for the interpretation and application of the present article.

II. Bases of Customs Valuation

Imported goods are valued according to the following bases:

1. The first basis for determining the value for customs purposes is the transaction value of the imported goods.

2. If the customs value can not be determined according to the first basis above, it shall be determined by the sequential application of the following alternative methods:

- (a) Transaction value of identical goods
- (b) Transaction value of similar goods
- (c) Deductive value
- (d) Computed value

3. If the customs value cannot be determined under the above methods, it shall be determined by application of reasonable methods that conform to the general principles and provisions of the Valuation Agreement, but with more flexibility.

4. The importer may request that "Deductive value" and "Computed value" be applied in reverse sequence.

First Method: Transaction Value of the Goods Being Valued

Transaction value is the price actually paid or to be paid against the sale of the goods for export to GCC States, mutatis mutandis.

I. Conditions of the transaction value

The transaction must satisfy the following conditions:

1. That there are no restrictions applicable to the disposition or use of the imported goods by the buyer, other than the restrictions imposed by law in the GCC States, or those which specify the geographical area within which the goods may be resold, or those which do not substantially affect the value of the goods;
2. The sales price is not subject to any condition or compensation whose value can not be determined;
3. That the seller is not entitled to any part of the proceeds of the resale, disposition or use of the goods by the importer as a subsequent stage, directly or indirectly, unless a proper adjustment, based on objective and quantitative data, can be made; and
4. That no relationship, if any, shall exist between the seller and buyer which affects the transaction value according to the provisions of paragraph (23) of Article (2) of this regulation "law".

II. Adjustments to the transaction value

When necessary, the following shall be added to the price actually paid or to be paid:

1. The costs borne by the buyer to the extent they are not included in the price actually paid or to be paid:
 - (a) Amounts of commission and brokerage, excluding the purchasing commission,
 - (b) Cost of the containers that are treated for customs purposes as one unit along with the goods under assessment, and
 - (c) Packing cost, whether for labour or material
2. An appropriate percentage of the costs of the following goods and services provided by the buyer, directly or indirectly, free or at a reduced cost, against its use in production of the imported goods, if it was not included in the price paid or to be paid, as per the following:
 - (a) Materials, parts, components and similar items used in production of the imported goods,
 - (b) Tools, dies, moulds and similar items used in production of the imported goods,
 - (c) Materials consumed in production of the imported goods, and
 - (d) Engineering works, designs, studies, graphs, drawings and similar items necessary for production of the imported goods and done in a country other than the GCC States.
3. License and royalty fees relating to the imported goods under assessment that must be paid by the importer (buyer), directly or indirectly, as a condition of sale of the goods being valued if not included in the price actually paid or payable, and
4. Value of any part of the proceeds from any subsequent sale, disposition or use of the imported goods, payable to the seller directly or indirectly.

III. The amounts related to the items mentioned in paragraphs 1 and 2 above shall be included based on objective and quantifiable data

Second Method: Transaction Value of Identical Goods

Transaction value of the identical goods sold for export to the GCC States and exported at or about the same time as the export of the goods being valued. At the time of its application, the transaction value of identical goods in a sale at the same commercial level and quantity shall be used.

In case such a transaction is not found, the transaction value of identical goods sold at a different commercial level or different quantity, adjusted for the difference, shall be used. In case such a transaction is not found, the transaction value of identical goods sold at a different commercial level or different quantity adjusted for the difference shall be used.

If more than one transaction value for identical goods is found, the lowest of such values shall be used for determining the customs value for the imported goods.

Third Method: Transaction Value of Similar Goods

Transaction value of the similar goods sold for export to the GCC States and exported at or about the same time as the export of the goods being valued. At the time of its application, the transaction value of similar goods in a sale at the same commercial level and quantity shall be used.

In case such a transaction is not found, the transaction value of similar goods sold at a different commercial level or different quantity, adjusted for the difference, shall be used

When there is more than one transaction value of similar goods, the lowest value will be used as the customs value of the imported goods.

Fourth Method: Deductive Value

The customs value will be determined according to the unit price at which the goods being were sold, or identical goods, or similar goods (in the same condition as imported), in the earliest sale in the Kingdom, in the local market, at the greatest aggregate (wholesale) quantity at or about the time the goods being valued are imported but before the elapse of 90 days from importation of the goods being valued, to non-related persons, provided that the following costs and expenses, incurred after arrival of the goods at the port of destination in the GCC States, shall be deducted:

1. Commissions usually paid or payable or additions usually added to allow for profit and general expenses in connection with the imported goods of the same class or kind sold in the Kingdom;
2. Local transportation and insurance costs and other related costs;
3. Customs taxes (duties).

If the imported goods, identical goods or similar goods, are not sold in the local market in the same condition as imported, the customs value shall be based, if requested by the importer, on the unit price at which the imported goods are sold, after processing and finishing, at the greatest aggregate quantity to non-related persons in the GCC States, along with making the appropriate deductions for the added value for such processing in addition to the deductions provided for in paragraphs (1), (2) and (3) of this method.

Fifth Method: Computed Value

Computed value is the sum of the various costs incurred in the country of origin of the goods which includes the following

1. Cost or value of materials and fabrication or other processing employed in producing the imported goods;
2. An amount for profit and general expenses equal to that usually reflected in the sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the GCC States;
3. The costs listed in II b. of the first method, if not included in (1) or (2) above, and the cost of packing.

Flexible Valuation Methods

If the customs value of the imported goods cannot be determined under the foregoing methods, the customs value shall be determined by reasonable methods that are in line with the general principles and provisions of the Valuation Agreement by referring once again to those five methods, but with more reasonable flexibility of application.

Imported goods may not be valued on the basis of:

1. The selling price in the GCC States of goods produced in the GCC States;
 2. The selling price of the goods in the local market of the country of exportation;
 3. Minimum, arbitrary or fictitious values;
 4. Production costs different from the computed value defined in the fifth method
 5. The price of goods for export to a country other than the GCC States; or
 6. A system which provides for the acceptance, for customs purposes, of the higher of two alternative values.
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