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Committee on Customs Valuation

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**NOTIFICATION UNDER ARTICLE 22 OF THE AGREEMENT ON
IMPLEMENTATION OF ARTICLE VII OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE 1994**

COSTA RICA

The following communication, dated 30 October 2013, has been received from the Permanent Mission of Costa Rica.

Pursuant to Article 22 of the Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement) and in compliance with the Decision on Notification and Circulation adopted by the Committee on Customs Valuation on 12 May 1995 (G/VAL/5), Costa Rica hereby notifies the Committee on Customs Valuation of Costa Rica's Decree No. 37955-H, published in Special Section No. 195 of the Official Journal *La Gaceta* of 10 October 2013. This Decree will enter into force as of its publication and repeals Executive Decree No. 36582-H of 18 May 2011 (Regulation on the Implementation of Customs Reference Values), published in Official Journal No. 101 of 26 May 2011; a copy is attached hereto.

I would appreciate it if this communication could be circulated.

Official Journal No. 195 - Thursday, 10 October 2013

No. 37955-H

THE PRESIDENT OF THE REPUBLIC

AND THE MINISTER OF FINANCE

Pursuant to Articles 140(3) and (18) and 146 of the Constitution, Articles 239 through 254 of General Law No. 6227 on Public Administration, Article 1 of Law No. 8687 on Judicial Notifications, Law No. 8220 on the Protection of Citizens from Excessive Administrative Requirements and Formalities, and Law No. 8454 on Certificates, Digital Signatures and Electronic Documents;

Whereas:

I. Article 11 of the General Customs Law establishes that the Directorate-General of Customs is the highest-ranking national customs body, entrusted with the technical and administrative management of customs functions and the issuing of policies and guidelines concerning the activities of the Customs and its subsidiary services, for which the National Customs Service is responsible under this Law and the provisions deriving therefrom;

II. By means of Law No. 7475, published in Special Section No. 40 of Official Journal No. 245, Costa Rica approved the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, including the Agreement on accession to the World Trade Organization, also known as the WTO Agreement, and the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (hereinafter the WTO Customs Valuation Agreement);

III. The "Regulation on the Implementation of Customs Reference Values" was enacted by Executive Decree No. 36582-H of 18 May 2011, published in Official Journal No. 101 of 26 May 2011, with a view to developing provisions for the establishment of a reference value database to guide customs control of goods entering the country at abnormally low prices;

IV. Reference value databases should be used as tools for the application of risk analysis methodology in combating fraudulent declared customs values, inasmuch as publication of reference values in the Official Journal and on the Ministry of Finance's website may dissuade importers from declaring the reference value rather than the real price of goods in commercial transactions and thus running counter to the spirit of the transaction value method in the WTO Customs Valuation Agreement, which provides that the price paid or payable for internationally traded goods should be used, to the extent that this price is in keeping with all of the aforementioned method's directives, irrespective of the level of trade, the purchased quantity, and the forms and terms of payment agreed upon by the seller and the buyer/importer;

V. The importer's agreement with and acceptance of the reference value, a practice provided for in Article 15 of Executive Decree No. 36582-H of 26 May 2011, is inconsistent with the provisions of the WTO Customs Valuation Agreement, specifically with respect to the use of the transaction value method. Indeed, this practice may lead to situations in which: (1) the reference value is lower than the actual value of the goods, in which case the importer will opt for the reference value in order to pay lower taxes than would have been due to the tax authorities had the true value of the goods been declared; (2) the opposite situation may exceptionally occur, namely, that the importer has to use a reference value that is higher than the actual value paid for the goods, and is then required to pay an unduly high amount of tax, while the State is unduly enriched at his expense; (3) the establishment of reference values in the customs clearance procedure impedes the exercise of customs control with respect to the valuation of goods, as it is the customs authority that would have determined the customs value at clearance; this would make the possibility of reconsidering and verifying the declared value questionable, since the valuation of goods is one of the most difficult aspects of customs duties to review; (4) the use of reference values requires the Customs Administration to continuously update its databases, which, from a technical standpoint, is difficult to do and, above all, unsustainable;

VI. All reference value databases should be established for the purpose of guiding the verification of declared customs values and dealing with any reasonable doubt the Customs Administration might have, once reference values - among other elements - are applied. The use of such instruments entails a process of consultation with the importer in order to confirm or discard the declared value on the basis of the transaction value method provided in the WTO Customs Valuation Agreement; they cannot be a direct or indirect mechanism for substituting the declared price of the goods presented for clearance, as stipulated in Executive Decree No. 36582-H;

VII. In light of the above, Executive Decree No. 36582-H is inconsistent with the provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, inasmuch as it allows the Customs Administration to substitute the declared value and to charge any difference in tax that might be generated;

VIII. When the Directorate-General of Customs submitted a request for technical information on the application of reference values to the Technical Valuation Committee of the World Customs Organization (WCO), the Committee endorsed the use of valuation databases in the context of risk assessment programmes, subject to reference values not being used as substitute values for imported goods or as a means of establishing minimum values. Specifically, according to the WCO's note, certain aspects of the text of Executive Decree No. 36582-H of 18 May 2011 appear to be inconsistent with the wording and intent of the Customs Valuation Agreement and should therefore be reconsidered and revised to ensure compliance with the Valuation Agreement;

IX. In accordance with the foregoing, when the early draft of Law No. 18.041 on Strengthening Tax Administration (which has been in force since 28 September 2012 as Law No. 9069) was being discussed in the Legislative Assembly, several deputies filed a motion (No. 364) to remove from that draft law the amendment to Article 244 of the General Customs Law, which sought to provide a legal basis for the application of reference values and reinforced the aforementioned Decree;

X. The Ministry of Finance agreed with and supported the adoption of motion No. 364 to remove any mention of reference values from Article 244 of the General Customs Law and thus there is currently no reference thereto in this Law;

XI. In view of the foregoing, it is necessary to repeal Executive Decree No. 36582-H of 18 May 2011, published in Official Journal No. 101 of 26 May 2011, enacting the "Regulation on the Implementation of Customs Reference Values",

Therefore decree:

Repeal of Executive Decree No. 36582-H, "Regulation on the Implementation of Customs Reference Values"

Article 1 —Repeal. Executive Decree No. 36582-H of 18 May 2011, published in Official Journal No. 101 of 26 May 2011, "Regulation on the Implementation of Customs Reference Values", is hereby repealed.

Article 2 —Entry into force. This Decree shall enter into force as of its publication.

Done at the Office of the President of the Republic, San José, this second day of September two thousand and thirteen.

LAURA CHINCHILLA MIRANDA.- Minister of Finance, Edgar Ayales. - Once - O.C. No. 17927. - Request No. 34800. - C-101000. (D37955-IN2013065483).
