



25 February 2021

(21-1647)

Page: 1/9

Committee on Customs Valuation

Original: English

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

SAINT KITTS AND NEVIS

The following communication, dated 12 February 2021, is being circulated at the request of the delegation of Saint Kitts and Nevis.

\_\_\_\_\_

In accordance with Article 22 of the Customs Valuation Agreement, attached is a copy of the relevant sections and schedules of The Customs Act 2014 of St. Kitts and Nevis. The sections and schedules therein will bring the valuation of goods in line with the provisions of the Valuation Agreement.

<https://skncustoms.com/Customs%20Act%202014/Schedules.pdf>

\_\_\_\_\_

SECOND SCHEDULE (Sections 80(1), 80(2) and 247)  
VALUATION OF IMPORTED GOODS

1. (1) In this Schedule,

- (a) "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;
- (b) "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods;
- (c) "identical goods" means goods produced in the same country which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical;
- (d) "identical goods and similar goods", as the case may be, do not include goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 8 (1) (b) (iv) because such elements were under taken in Saint Christopher and Nevis;
- (e) "produced" includes grown, manufactured and mined;
- (f) "similar goods" means goods produced in the same country which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.

(2) For the purpose of this Schedule,

- (a) persons shall be deemed to be related only if:
  - (i) they are officers or directors of one another's business,
  - (ii) they are legally recognized partners in business,
  - (iii) they are employer and employee,
  - (iv) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them,
  - (v) one of them directly or indirectly controls the other,
  - (vi) both of them are directly or indirectly controlled by a third person,
  - (vii) together they directly or indirectly control a third person, or
  - (viii) they are members of the same family;
- (b) one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter;
- (c) persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria of subparagraph 2 (a);
- (d) the term person means a natural or legal person;
- (e) an event shall be deemed to occur about the same time as another event if the first event occurs on the same day as the other event or within the forty-five days immediately before or the forty-five days immediately after, the day on which the other event occurs.

2. (1) The customs value of imported goods shall be determined under paragraph 3 whenever the conditions prescribed therein are fulfilled.

(2) Where such value cannot be determined under paragraph 3, it shall be determined by proceeding sequentially through paragraphs 4 to 7, inclusive, to the first such paragraph under which it can be

determined, subject to the provision that, where the importer requests it and the Comptroller agrees, the order of application of paragraphs 6 and 7 shall be reversed.

(3) Except as provided for in sub-paragraph (2), it is only when the customs value of imported goods cannot be determined under a particular paragraph that the provisions of the next paragraph in the sequence established by sub-paragraph (2) can be applied.

(4) Where the customs value of imported goods cannot be determined under paragraphs 3 to 7, inclusive, it shall

- (a) be determined using reasonable means consistent with the principles and general provisions of this Schedule;
- (b) to the greatest extent possible, be based on previously determined customs values; and
- (c) make use of the methods of valuation laid down in paragraphs 3 to 7, inclusive, using, where necessary, reasonable flexibility in their application.

(5) No customs value shall be determined under sub-paragraph (4) on the basis of:

- (a) the selling price in Saint Christopher and Nevis of goods produced in Saint Christopher and Nevis;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with paragraph 7;
- (e) the price of goods for export to a country other than Saint Christopher and Nevis;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

3. (1) The customs value of imported goods determined under this paragraph shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Saint Christopher and Nevis, adjusted in accordance with paragraph 8, and in appropriate cases paragraph 9, provided:

- (a) that there are no restrictions as to the disposition or use of the goods by the buyer, other than restrictions which
    - (i) are imposed or required by law or by the public authorities in Saint Christopher and Nevis,
    - (ii) limit the geographical area in which the goods may be resold, or
    - (iii) do not substantially affect the value of the goods;
  - (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
  - (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with paragraph 8; and
  - (d) that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes under sub-paragraph (2).
- (2) (a) In determining whether the transaction value is acceptable for the purposes of sub-paragraph (1), the fact that the buyer and the seller are related within the meaning of paragraph 1 shall not in itself be grounds for regarding the transaction value as

unacceptable. Where necessary, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise the Comptroller has grounds for considering that the relationship influenced the price, he or she shall communicate the grounds to the importer who shall be given a reasonable opportunity to respond;

- (b) in a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with sub-paragraph (1) whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:
  - (i) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to Saint Christopher and Nevis,
  - (ii) the customs value of identical or similar goods, as determined under paragraph 6,
  - (iii) the customs value of identical or similar goods, as determined under paragraph 7, in applying the foregoing texts, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in paragraph 8 and costs incurred by the seller in sales in which he or she and the buyer are not related that are not incurred by the seller in sales in which he or she and the buyer are related; (c) the tests set forth in sub-paragraph 2 (b) shall be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under that sub-paragraph.
- (3) (a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. Payments may be made directly or indirectly, and need not necessarily take the form of a transfer of money, and shall include:
  - (i) all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller, and
  - (ii) any settlement by the buyer, whether in whole or in part, of a debt owed by the seller;
- (b) activities, including marketing activities, undertaken by the buyer on his or her own account, other than those for which an adjustment is provided in paragraph 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller, and their cost shall not be added to the price actually paid or payable in determining the customs value of imported goods.
- (4) The customs value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:
  - (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
  - (b) customs duties and other taxes payable in Saint Christopher and Nevis by reason of the importation or sale of the goods; (c) the cost of transport after importation.
- (5) The fact that goods which are the subject of sale are entered for home use within Saint Christopher and Nevis shall be regarded as adequate indication that they were sold for export to Saint Christopher and Nevis. This indication shall also apply where successive sales of goods have taken place before valuation. Where such successive sales have taken place each price resulting from them may be used as a basis for valuation.
- 4. (1) (a) The customs value of imported goods determined under this paragraph shall be the transaction value of identical goods sold for export to Saint Christopher and Nevis and exported at or about the same time as the goods being valued;

- (b) in applying this paragraph, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in value.

(2) Where the costs and charges referred to in paragraph 8 (1) (e) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

(3) In applying this paragraph,

- (a) if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under sub-paragraph (1) for identical goods produced by the same person as the goods being valued; and
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that such adjustment shall be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment.

(4) For the purposes of this paragraph, the transaction value of identical imported goods means a customs value previously determined under paragraph 3, adjusted as provided for in sub-paragraph (1) (b) and (2) of this paragraph.

5. (1) (a) The customs value of imported goods determined under this paragraph shall be the transaction value of similar goods sold for export to Saint Christopher and Nevis and exported at or about the same time as the goods being valued.

- (b) In applying this paragraph, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment lead to an increase or a decrease in value.

(2) Where the costs and charges referred to in paragraph 8 (1) (c) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

(3) In applying this paragraph,

- (a) if more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under subparagraph (1) for similar goods produced by the same person as the goods being valued;
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that such adjustment shall be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment.

(4) For the purposes of this paragraph, the transaction value of similar imported goods means a customs value previously determined under paragraph 3, adjusted as provided for in sub-paragraph (1) (b) and 2 of this paragraph.

6. (1) (a) If the imported goods or identical or similar imported goods are sold in Saint Christopher and Nevis in the condition as imported, the customs value of the imported goods, determined under this paragraph, shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:
- (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in Saint Christopher and Nevis of imported goods of the same class or kind.
  - (ii) the usual costs of transport and insurance and associated costs incurred within Saint Christopher and Nevis, and
  - (iii) the customs duties and other taxes payable in Saint Christopher and Nevis by reason of the importation or sale of the goods;
- (b) if neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value of imported goods determined under this paragraph shall, subject otherwise to the provisions of sub-paragraph (1) (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Saint Christopher and Nevis in the condition as imported at the earliest date after the importation of goods being valued but before the expiration of ninety days after such importation.

(2) If neither the imported goods nor identical nor similar imported goods are sold in Saint Christopher and Nevis in the condition as imported, then, if the Comptroller so decides, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Saint Christopher and Nevis who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in subparagraph (1) (a). Where this method of valuation is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction and other industry practices shall form the basis of the calculations.

(3) In this paragraph, the unit price at which imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

(4) Any sale in Saint Christopher and Nevis to a person who supplies directly or indirectly free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 8 (1) (b), shall not be taken into account in establishing the unit price for the purposes of this paragraph.

(5) For the purposes of sub-paragraph (1) (a) (i),

- (a) profit and general expenses shall be taken as a whole. The figure for the purposes of this deduction shall be determined on the basis of information supplied by or on behalf of the importer unless his or her figures are inconsistent with those obtaining in sales of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer;
- (b) in determining either the commission or the additions usually made for profit and general expenses, the question whether certain goods are of the same. Class or kind as other goods shall be determined on a case-by-case basis by reference to the circumstances involved. In doing this, sales for which the necessary information can be

provided of the narrowest group or range of imported goods of the same class or kind as the goods being valued should be examined; and

- (c) goods of the same class or kind includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

(6) For the purposes of sub-paragraph (1) (b), the earliest date shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

7. (1) The customs value of imported goods determined under this paragraph shall be based on a computed value which shall consist of the sum of:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in 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 Saint Christopher and Nevis; and
- (c) the cost or value of the items referred to in paragraph 8(1) (e).

(2) The cost or value of materials and fabrication referred to in sub-paragraph (1) (a) above shall include the cost of elements specified in paragraph 8 (1) (a) (ii) and (iii). It shall also include the value, duly apportioned, of any element specified in paragraph 8 (1) (b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 8 (1) (b) (iv) which are undertaken in Saint Christopher and Nevis shall be included only to the extent that such elements are charged to the producer. No cost or value of an element referred to in this sub-paragraph shall be counted more than once in determining the computed value.

(3) The cost or value referred to in sub-paragraph (1) (a) shall be determined on the basis of information relating to the production of the goods being valued, supplied by or on behalf of the producer. It shall be based upon the commercial accounts of the producer, provided that these accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

(4) For the purposes of sub-paragraph (1) (b),

- (a) the amount for profit and general expenses shall be taken as a whole and shall be determined on the basis of information supplied by or on behalf of the producer unless his or her figures are inconsistent with those usually reflected in 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 Saint Christopher and Nevis.
- (b) if the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of the goods of the same class or kind referred to in sub-paragraph (4) (a) the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods;
- (c) goods of the same class or kind means goods imported from the same country as the goods being valued;
- (d) whether goods are of the same class or kind as other goods shall be determined on a case-by-case basis with reference to the circumstances involved. In doing this, sales for export to Saint Christopher and Nevis of the narrowest group or range of goods of the same class or kind as the goods being valued for which the necessary information can be provided should be examined;
- (e) the general expenses referred to cover the direct and indirect cost of producing and selling the goods for export which are not included under sub-paragraph (1) (a).

8. (1) In determining the customs value under paragraph 3, there shall be added to the price actually paid or payable for the imported goods;

- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
  - (i) commission and brokerage, except buying commissions,
  - (ii) the cost of containers which are treated as being one of the customs purpose with the goods in question,
  - (iii) the cost of packing, whether for labor or materials;
- (b) the value, apportioned appropriately of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
  - (i) materials, components, parts and similar items incorporated in the imported goods,
  - (ii) tools, dyes, moulds and similar items used in the production of the imported goods,
  - (iii) materials consumed in the production of the imported goods,
  - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Saint Christopher and Nevis and necessary for the production of the imported goods;
- (c) royalties and license fees, which among other things, may include payments in respect of patents, trademarks and copyrights, related to the goods being valued that the buyer must pay either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable.
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- (e)
  - (i) the cost of transport of the imported goods to the port or place of importation,
  - (ii) loading and handling charges associated with the transport of the imported goods to the port or place of importation, and
  - (iii) the cost of insurance.

(2) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this paragraph.

(3) Additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data; and if such do not exist a transaction value shall not be determined under the provisions of paragraph 3.

(4) In this paragraph, the term "buying commissions" means fees paid by an importer to his or her agent for the service of representing him or her abroad in the purchase of the goods being valued.

(5) Notwithstanding sub-paragraph (1) (c) of this paragraph,

- (a) charges for the right to reproduce the imported goods in Saint Christopher and Nevis shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and
- (b) payments made by the buyer for the right to distribute or re-sell the imported goods shall be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to Saint Christopher and Nevis of the goods.

9. (1) Charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods shall not be included in the customs value determined under paragraph 3 provided that

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement has been made in writing;
- (c) where required by the Comptroller, the buyer can demonstrate that:
  - (i) such goods are actually sold at the price declared as the price actually paid or payable, and
  - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided.

(2) The provisions of sub-paragraph (1) shall apply regardless of whether the finance is provided by the seller, a bank or another person; and it shall also apply, *mutatis mutandis*, where customs value is determined under a method other than the transaction value.

---