



25 February 2014

(14-1153)

Page: 1/5

Committee on Customs Valuation

Original: Spanish

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

CHECKLIST OF ISSUES

CHILE

The following communication, dated 7 February 2014, is being circulated at the request of the delegation of Chile.

1. Questions concerning Article 1:

(a) Sales between related persons:

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

Sales between related persons are examined in accordance with Article 1.1(d) and 1.2(a) and (b) of the WTO Agreement on Customs Valuation. In fact, these provisions are covered by Articles 12(d), 13 and 14 of Ministry of Finance Decree No. 1134 – approved by Resolution No. 1.300 (O.J.20.06.2002) establishing the Compendium of Customs Regulations - on customs valuation regulations, with the instructions adopted under Chapter II of Resolution No. 1300/2006.

Special provisions on this subject are also included in the first subchapter of Chapter II of the Compendium of Customs Regulations under paragraph 4.1.2: "Requirements" for the acceptance of the transaction value, subparagraph (d); 4.1.3: "Relationship between the buyer and the seller"; and 4.1.4: "Acceptability and comparison prices between related persons".

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

If intercompany prices are considered as grounds for regarding the prices as being influenced, the customs authorities will examine the "circumstances surrounding the sale", and will accept the value declared as the transaction value provided the relationship did not influence the price. The declared transaction value will also be accepted whenever the importer demonstrates that such value closely approximates some of the test values provided (paragraph 4.1.4.2 of the first subchapter of Chapter II, Compendium of Customs Regulations).

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

The provision in our domestic legislation for communicating in writing to the importer based on Article 1.2(a) of the WTO Customs Valuation Agreement, can be found in paragraph 4.1.4.1, third subparagraph, of the first subchapter of Chapter II of the Compendium of Customs Regulations, which reads as follows: "If following the general examination of the circumstances surrounding the sale the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and provide the importer with the opportunity to respond."

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

It has been implemented on the basis of reasonable doubt, as established in Article 69 of the Customs Ordinance which sets out the mechanism for verifying the truth and accuracy of the value declared by the importer at the valuation stage, covered by Article 84 of the said Ordinance.

If the customs administration does not accept the "test values" and the declared value is modified accordingly, resulting in the collection of unpaid duties and taxes possibly leading to a complaint before the tax and customs courts under Articles 117 et seq. of the Customs Ordinance, those courts shall definitively settle the conflict by accepting or rejecting the "test values" submitted by the importer.

(b) Price of lost or damaged goods:**Are there any special provisions or practical arrangements concerning the valuation of lost or damaged goods?**

Yes. They can be found in paragraph 7.2 of the second subchapter of Chapter II of the Compendium of Customs Regulations, which provides as follows:

"The customs value of the goods referred to in this subchapter shall be determined taking account of their state or condition at the time customs duties are payable.

Accordingly, consideration shall be given, where appropriate, to possible reductions for use or damage. Where this is the case, the amount involved shall be determined by a certificate issued by an insurance company or a report by a competent expert or technician. Both the certificate and the report shall be reviewed by the competent regional customs administrator or director."

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?

Thus far, there have been no such requests from importers.

3. How has Article 5.2 been implemented?

Here once again, we have not had occasion to implement this article, since the importers have made no such request.

4. How has Article 6.2 been implemented?

To date, no one has required or compelled any person to produce any account or other record for the purpose of determining a computed value in accordance with the provisions of that article. Nor has information supplied by the producers of the goods been submitted for verification in another country.

5. Questions concerning Article 7:**(a) What provisions have been made for making value determinations to Article 7?**

Paragraph 4.6 of the first subchapter of Chapter II of the Compendium of Customs Regulations contains the provisions relating to the implementation of this article, *inter alia*: requirements governing its implementation, criteria, reasonable flexibility, and excluded procedures.

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

The provisions are contained in Article 69 of the Customs Ordinance on control of the truth and/or accuracy of the declared value, and in paragraph 5.5(e) of the first subchapter of Chapter II of the Compendium of Customs Regulations.

In this connection, the mentioned paragraph states that "[t]he same communication shall indicate the specific valuation method used to determine the new customs value."

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

Yes, they are delineated in paragraph 4.6.4 on excluded procedures in the first subchapter of Chapter II of the Compendium of Customs Regulations which, in subparagraphs (a) and (g), sets out the procedures that are excluded in determining the custom's value.

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?

These options are covered by the following legal provisions:

- Article 6 of Decree with Force of Law (DFL) No. 31 (O.J.22.04.2005);
- Article 6 of the Regulations implementing the WTO Agreement on Customs Valuation;
- Paragraph 2.7 of the first subchapter of Chapter II of the Compendium of Customs Regulations on the customs value of goods.

In accordance with these provisions, the basis for taxation in Chile is CIF.

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

The exchange rate is published on the website of the National Customs Service under "Indicadores", on the basis of information provided on a monthly basis by the Board of the Central Bank of Chile.

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

Confidentiality is guaranteed by the following provisions:

- Article 6 of the Customs Ordinance;
- Article 2 of Ministry of Finance Decree No. 1.134 (O.J.20.06.2002);
- Paragraph 2.1 of the first subchapter of Chapter II of the Compendium of Customs Regulations.

9. Questions concerning Article 11:

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

The rights of appeal open to the importer or any other person are those set forth in Articles 117 and 121 of the Customs Ordinance.

- Article 117 refers to customs value complaints filed with the tax and customs courts, which exercise their jurisdiction independently of the Customs Service and the Internal Tax Service;
- Article 121 concerns appeals for "administrative review", which are filed with the National Customs Service.

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

The importer only has two channels of appeal: those mentioned above.

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

- (a) (i) the relevant national laws;
(ii) the regulations concerning the application of the Agreement;
(iii) the judicial decision and administrative rulings of general application relating to the Agreement;
(iv) general or specific laws being referred to in the rules of implementation or application.

All of the information covered by Article 12 of the Agreement is published in the Official Journal of the Republic of Chile, and the relevant parts posted on the official website of the National Customs Service (<http://www.aduana.cl>).

(b) Is the publication of further rules anticipated? Which topics will they cover?

Yes, for example the advance pricing agreement (APA) procedure. Joint approval with the Internal Tax Service of the record of acceptance of the APAs pertaining to the importation of goods (Article 41 E, No. 7, Law No. 20.630 (O.J.27.09.2012)).

11. Questions concerning Article 13:

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

In our legislation, the subject of the "guarantee" is covered by the following provisions:

- DFL No. 31 (O.J.22.04.2005), last indent of Article 5;
- Article 92 of the Customs Ordinance;
- Ministry of Finance Decree No. 1.134. (O.J.20.06.2002), Article 4;
- Paragraph 2.4 of the first subchapter of Chapter II of the Compendium of Customs Regulations, under the title "Guarantees".

(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. Article 69 of the Customs Ordinance stipulates that "[a] reasoned decision shall be taken and communicated in writing within a maximum period of 12 working days."

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

Yes. Paragraph 5.5 (e) of the first subchapter of the Chapter II of the Compendium of Customs Regulations states that: "Upon notification of the amount to be recovered, the importer shall also be notified that the grounds for doubt have not been removed and accordingly, the Customs Administration has disregarded the declared value. The same communication shall indicate the specific valuation method used to determine the new customs value."

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

The Interpretative Notes have been posted on the official website of the Customs Service under "WTO Customs Valuation Agreement".

As regards implementation, they are included alongside the substantive rules in the instructions for the implementation of the WTO Agreement on Customs Valuation in Chapter II of the Compendium of Customs Regulations.

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

They have been implemented in accordance with Decision 3.1 of the WTO Committee on Customs Valuation, regulated by Article 7(f) of Ministry of Finance Decree No. 1.134 (O.J.20.06.2002) and incorporated in paragraph 2.8(f) of the subchapter of the Chapter II of the Compendium of Customs Regulations, under the title "Expenditures, costs, duties and taxes that are not included in the customs value".

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?

They have been implemented on the basis of paragraph 2 of Decision 4.1 of the WTO Committee on Customs Valuation, which itself has been incorporated in paragraph 13 of the second subchapter of Chapter II of the Compendium of Customs Regulations and in a series of technical documents issued by the Technical Sub-Directorate and/or the Sub-Department for Valuation of the National Customs Directorate, for the purpose of regulating the valuation procedure so that the customs value is determined taking into account only the "cost of the carrier medium".
