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Committee on Customs Valuation

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

CHECKLIST OF ISSUES

DOMINICAN REPUBLIC

The following communication, dated 17 December 2019, is being circulated at the request of the delegation of the Dominican Republic.

1. Questions concerning Article 1:

(a) Sales between related persons:

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

No. The provisions established in Article 1.2 of the Agreement and the definitions established in Article 15.4 apply, as reflected in Article 10 of Decree 36-11 issuing the Customs Valuation Regulations (hereinafter: Decree 36-11).

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

No. In principle, the fact that the buyer and the seller are related does not mean that any influence is presumed. However, where a price declared by a person related to a supplier is lower than prices previously accepted by the Directorate-General of Customs (hereinafter: Customs) for identical or similar goods imported at or about the same time by buyers unrelated to the seller, the relationship may be considered to have influenced the price. An investigation on the basis of reasonable doubt is then launched.

(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))?

Article 10(I) of Decree 36-11 provides as follows: "If on the basis of the aforementioned elements, Customs has doubts as to whether the declared price was affected by the relationship, this fact shall be communicated to the importer." In other words, Customs does not require the importer to request communication of the grounds in writing but provides them of its own accord.

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

Article 10(II) of Decree 36-11 provides as follows: "In responding to a communication of the type described in the above paragraph, the importer must provide the customs administration with documentary evidence showing that the value was not influenced by the relationship, through one of the following means:

- a. An analysis of the circumstances surrounding the sale.

- b. The use of test values.

For the latter test, in determining whether the declared value closely approximates to a test value, the following factors should be considered on a case-by-case basis:

- (a) The nature of the good.
(b) The nature of the industry.
(c) The time-period of importation; that is, whether the goods considered were imported at or about the same time".

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?

Even though the importer indeed has the right, under Article 4, to choose the order of application of the two methods, this may give rise, except in certain cases of related companies, to real difficulties in determining the customs value under Article 6, especially for developing countries. Accordingly, the Dominican Republic formulated a reservation and the value must be determined in accordance with Article 5. Moreover, Article 32 of Decree 36-11 provides as follows:

"Article 4 of the GATT 1994 Valuation Agreement will apply only when the Directorate-General of Customs accepts a request to reverse the order of application of Articles 5 and 6 of that Agreement."

However, the Dominican Republic has no experience of requests of this kind.

3. How has Article 5.2 been implemented?

It has not been implemented.

4. How has Article 6.2 been implemented?

It has not been implemented, except in cases of related companies that have provided information voluntarily.

5. Questions concerning Article 7:

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

The method of last resort is governed by provisions of the Customs Valuation Agreement that were incorporated into Article 27 of Decree 36-11, which provides as follows:

"In applying this method, a flexible approach will be taken to the methods set out in Articles 1 to 6 of the GATT 1994 Valuation Agreement. However, if a customs value cannot be determined by applying those methods, even in a flexible manner, such a value can, as a last resort, be determined by applying other reasonable methods involving the use of specialized publications on goods prices on the international market, provided that these are not prohibited under Article 7.2 of the Agreement and they are consistent with the principles and general provisions of the Agreement."

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

In the reasonable doubt procedure, the importer is informed of the rejection of method 1 and of the consequent application of the appropriate replacement method, taking account of consultations.

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

Article 27 of Decree 36-11 refers to the prohibitions established in Article 7.2 of the Agreement.

6. How have the options found in Article 8.2 been handled? In the case of f.o.b. application, are ex-factory prices also accepted?

The domestic legislation of the Dominican Republic provides that all the elements established in Article 8.2 of the Agreement shall be incorporated into the customs value. The assessment basis is the f.o.b. price.

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

The rate of exchange is established by the Central Bank of the Dominican Republic. It is published on the websites of the Bank, the Directorate-General of Internal Revenue and the Directorate-General of Customs.

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

To ensure the confidentiality required by Article 10 of the Agreement, technical data protection measures have been adopted involving digital signatures. Furthermore, our domestic legislation – Article 17 of Law 200-04 concerning free access to public information – establishes limits and exceptions to the obligation on the State and other institutions to disclose information on account of preponderant public interests, namely:

"(i) Where it is a question of trade-related, industrial, scientific or technical secrets, the property of individuals or the State, or restricted or confidential industrial or trade-related information from third parties which the administration has received owing to formalities or procedures for obtaining a permit or authorization or any other procedures and which has been supplied for this sole purpose and the disclosure of which could cause financial injury";

Moreover, Article 18 of Law 200-04 establishes limits to access on account of preponderant private interests:

"A request for information made by the parties concerned may be rejected where it may affect preponderant private interests and rights. That circumstance shall be understood to apply in the following cases:

Where personal data is involved the publication of which could signify an invasion of personal privacy. However, the Administration could supply this data and information if the applicant is able to show in the request that this information is in the public interest and will contribute towards resolving an ongoing investigation conducted by another public administrative body.

Where access to the requested information may affect intellectual property rights, especially a private individual's copyright.

Where personal data are involved, these must be supplied only where it has been recorded explicitly and unequivocally that the person affected consents to the supply of such data or where the publication thereof is required by law."

9. Questions concerning Article 11:

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

With respect to the determination of customs value, complaints and appeals against decisions of the customs authorities follow the procedure established in national law, taking account of the terms of Article 11 of the Agreement (right of appeal without penalty). Accordingly, the Constitution of the Republic provides for:

- (1) Administrative appeals: (a) appeal for review; and (b) appeal to a higher authority;
- (2) Judicial appeals: (a) tax administration appeal and judicial review;
- (3) In addition, there are preventive measures, which are intended to suspend the effects of an administrative act (protection of constitutional rights in relation to taxation appeals), and precautionary measures, which are established during the protection hearing or constitutional proceedings.

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

Appellants are informed of their appeal rights when they are notified of an administrative or judicial act.

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

(a) (i) The relevant national laws

These are published in the Official Gazette and become binding one day after their publication. They are also published on the institutional website and in the mass media.

(ii) The regulations concerning the application of the Agreement

These are established by Presidential Decree and are published in the Official Gazette. They are also published on the institutional website and in the mass media.

(iii) The judicial decision and administrative rulings of general application relating to the Agreement

The judiciary is responsible for the publication of all court decisions on its official website and for notifications by bailiffs.

(iv) General or specific laws being referred to in the rules of implementation or application

Institutional website and mass media.

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

No.

11. Questions concerning Article 13:

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

Domestic legislation provides – in Article 30 of Decree 36-11 – for the possibility of withdrawing goods subject to provision of a guarantee if, in the course of determining the customs value, it becomes necessary to delay the final determination of that value.

(b) Have additional explanations been laid down?

Policies and procedures are established on the institutional website. There is also a protocol for the enforcement and cancellation of bonds.

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?

This provision is contained in Article 6(I) of Decree 36-11, which states as follows:

"Upon written request, the importer will be entitled to a written explanation of the method used to determine the customs value of the goods."

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

No.

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

Article 14 states as follows: "The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement."

Accordingly, the Dominican Republic ratified both the Agreement and its notes. Moreover, Article 2 of Decree 36-11 states as follows: "Customs valuation in the Dominican Republic will be governed by: (i) the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, referred to hereinafter as 'the GATT 1994 Valuation Agreement' or 'the WTO Valuation Agreement' ...".

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

Chapter IV of Decree 36-11 establishes the elements that are not considered part of the customs value, including:

Article 15. "Charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of the imported goods will not be regarded as part of the customs value, provided that:

- (a) The charges are distinguished from the price actually paid or payable for the goods.
- (b) The financing arrangement was made in writing.
- (c) [...] 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."

Paragraph I. "The foregoing will apply regardless of whether the finance is provided by the seller or another natural or legal person. Furthermore, where appropriate, the above requirements will apply in cases where the goods are valued under a method other than transaction 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?

The Dominican Republic applies the provision of paragraph 2 of Decision 4.1. Here the value of the software must be distinguished from the value of the carrier medium.
