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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

GUATEMALA

The following communication, dated 27 May 2021, is being circulated at the request of the delegation of Guatemala.

1. Questions concerning Article 1:

(a) Sales between related persons:

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

No.

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

No. Under Article 204 of the Implementing Regulations for the Central American Uniform Customs Code (RECAUCA), the importer may be asked to provide information, documents and other evidence proving that the declared value represents the amount actually paid or payable for the imported goods, where the Customs Service has reason to doubt the truth or accuracy of the particulars or documents produced.

Furthermore, under Article 205 of the same legal instrument, an administrative procedure may be initiated where there are doubts regarding value, with time frames granted for the receipt of evidence from the importer.

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

Outside the clearance context, and during the administrative process that generated a reasonable doubt, a decision may be notified communicating the Customs Service's reasons for believing that the relationship has influenced the price. A period of 10 days is provided as a measure to enhance decision-making regulated by Article 626 of the RECAUCA.

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

Bearing in mind that it falls to the importer to demonstrate that the declared value approximates to some of the prices or values indicated in Article 1(b) of the Agreement, Article 205 of the RECAUCA describes the procedures applied by the Customs Authority where it has reason to doubt the truth or accuracy of the information submitted by the importer in relation to the value of the imported goods. The same Article explains that the importer has the opportunity to provide, within the corresponding time frames, proof that the relationship has not influenced the price.

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

There are currently no such regulations in Guatemala. In the valuation of goods that arrive in the country in a damaged state, no depreciation of the transaction value regulated by Article 1 is considered.

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?

Pursuant to Article 196 of the RECAUCA, the importer is required to submit a request to the Customs Authority in writing, stating the reasons for requesting the reverse application of the valuation methods, within the 10 days following the date on which the Customs Authority notifies the importer of its intention to apply Article 5 of the Agreement for the customs valuation of the goods.

3. How has Article 5.2 been implemented?

To date, there have been no cases in which Article 5.2 has had to be implemented.

4. How has Article 6.2 been implemented?

To date, there have been no cases in which Article 6.2 has had to be implemented; because of this, we have no experience of requesting other types of accounts for the purposes of determining a computed value.

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

Guatemala has no administrative provisions for the application of Article 7. However, in cases in which it has been applied, this has meant setting aside the previous methods used where there was no certainty as to value, i.e. where there was reasonable doubt on the basis of the values previously accepted by the Customs Service in application of methods 2 and 3 of the Agreement. On this basis, other sources of information have been used to substantiate the doubt regarding value.

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

Pursuant to Article 16 of the Agreement, and in accordance with Article 207 of the RECAUCA, the importer may request, within the three days following the date of notification of the customs value determined by the Customs Authority, an explanation regarding the method used as the basis for determining the customs value of the importer's goods. The Customs Authority shall respond within the 10 days following the date of receipt of the request.

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

The method referred to in Article 7 is, however, one that is applied infrequently; when applying the method, consideration is given to the prohibitions described in Article 7.2 of the Agreement on the basis of data available in the database.

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 customs value is made up of the value of the goods (transaction value) plus the additional elements listed in Article 8 of the Agreement, regardless of the incoterm under which the sale and purchase has been agreed.

Accordingly, Article 188 of the RECAUCA establishes that the cost of transporting the imported goods forms part of the customs value. The costs incurred in the exporting country are therefore taken into account when calculating the customs value.

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

According to Article 200 of the RECAUCA, currencies are converted at the exchange rate that is supplied by the Central Bank - in Guatemala's case, the Bank of Guatemala - and in effect on the date of acceptance of the goods declaration.

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

The Customs Service protects the information provided by the importer as evidence used to verify the value of its goods. Such information is therefore not considered publicly available.

Article 44 of the Organic Law of the Tax Administration Supervisory Authority, Decree No. 1-98 of the Congress of the Republic of Guatemala, provides for confidentiality.

The members of the Board, the head of the Supervisory Authority, managers and other officials and employees of the Tax Administration Supervisory Authority (SAT) and any other person providing their services to the SAT, including advisers, are not permitted to disclose or provide any information or documents known to them that must, under the Political Constitution of the Republic of Guatemala, the Tax Code or other laws, remain secret or confidential.

Furthermore, Article 167 of the RECAUCA establishes "security measures" under which IT systems must ensure the privacy, confidentiality, non-repudiability and integrity of data and documents that are transmitted and stored, as well as the authenticity of the entity issuing them and of users of the Customs Service's IT systems.

9. Questions concerning Article 11:**(a) What rights of appeal are open to the importer or any other person?**

The importer or any other person to whom final rulings or decisions of the Customs Authority on taxes or penalties are addressed may file appeals for revision with the higher authority of the Customs Service, as set out in Article 623 of the RECAUCA. Appeals for revision may also be filed in respect of rulings or decisions issued by the Customs Authority that prejudice the party to whom the ruling is addressed, in relation to the regimes, formalities, operations and procedures regulated by the Central American Uniform Customs Code and the RECAUCA, in accordance with Article 51 of the National Customs Law, Decree No. 14-2013 of the Congress of the Republic of Guatemala.

Appeals may be filed against final rulings or decisions of the higher authority of the Customs Service assessing taxes or penalties, or which prejudice the party to whom they are addressed, in accordance with Article 625 of the RECAUCA.

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

All aspects related to the importer's right to file an appeal in respect of decisions issued by the Customs Authority or the higher authority of the Customs Service are regulated by Article 127 of the CAUCA, as well as by Articles 623 to 625 of the RECAUCA.

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.**

In accordance with Articles 179 and 180 of the Political Constitution of the Republic of Guatemala, which establish that laws must be published in the Official Journal, *Diario de Centro América*, laws will enter into force throughout the national territory eight days after being published in full. All laws, regulations and administrative rulings are therefore published in the *Diario de Centro América*.

All information relating to laws and regulations is published on the website of the Tax Administration Supervisory Authority, of which the Customs Directorate forms part, at: <http://portal.sat.gob.gt/index.php/leyes.html>

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

The publication of other rules related to the Agreement is not anticipated, since the CAUCA and RECAUCA provide for the determination of the customs value of goods.

11. Questions concerning Article 13:

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

Pursuant to Articles 202 and 203 of the RECAUCA, the importer may request the release or clearance of its goods from customs by posting a security covering the total amount of taxes.

The security may take the form of a deposit, surety or any other means specified by the Customs Service covering the difference in relation to the amount of import taxes, as regulated under Articles 52 and 53 of the CAUCA.

(b) Have additional explanations been laid down?

The resolution issued by the Customs Service granting authorization to post a security sets out the forms to be taken and requirements to be met by such a security prior to being accepted and the relevant goods being released.

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. Pursuant to Article 207 of the RECAUCA, the authority must provide an explanation regarding the method used as the basis for determining the customs value of the goods, within the three days following the receipt of a request for an explanation from the importer.

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

No. There are no further provisions.

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

In practice, they are used when conducting the reasonable doubt analysis, in accordance with the relevant Article, as indicated in Article 14 of the 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?

In Guatemala, there have been no cases in which the invoice specifies interest charges under a financing arrangement entered into by the buyer and relating to the purchase of imported goods. However, according to Article 190 of the RECAUCA, 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, provided that the circumstances set out in that Article exist.

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?

In Guatemala, in order to determine the customs value of software when, in the import invoice, the value of the carrier medium is not separated from the value of the software, the Customs Service takes as the customs value the value entered in the invoice.

However, in cases where the value of the carrier medium is distinguished from that of the data or instructions (software), the customs value is determined on the basis of the value of the carrier medium itself, in accordance with Decision 4.1 on the valuation of carrier media bearing software for data processing equipment.
