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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**

CHECK-LIST OF ISSUES

KAZAKHSTAN

The following communication, dated 27 April 2016, is being circulated at the request of the delegation of the Kazakhstan.

Attached is the response of Kazakhstan to the check-list of issues on the implementation and administration of the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

**1. Questions concerning Article 1:**

**(a) Sales between related persons:**

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

Articles 4.1.4 and 4.3 - 4.6 of Customs Union Agreement on the Determination of the Customs Valuation of Goods, Transferred through the Customs Border of the Customs Union (hereinafter: "CU Agreement on Customs Valuation") contain provisions for determining the transaction value in sales between related persons as set out in Article 1 and the Interpretative Note to Article 1 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (hereinafter: "WTO Agreement").

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

The fact that the buyer and the seller are related is not *prima facie* considered as grounds for regarding the respective prices as being influenced.

In accordance with Articles 4.3-4.6 of the CU Agreement on Customs Valuation in order to determine whether the price has been influenced by the relationship between the buyer and the seller, any of the mechanism set out in Article 1 of the WTO Agreement can be applied.

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

In accordance with Article 4.4 of the CU Agreement on Customs Valuation in case the buyer and the seller are related and on the basis of information presented by the declarant (or customs representative) or obtained by the customs bodies by other means, the customs bodies reveal the indications that the relationship between the seller and the buyer has influenced the price paid or payable, the customs bodies shall inform the declarant (customs representative) in writing about such indications.

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

Article 4.4 of the CU Agreement on Customs Valuation provides the importer related to the seller with the opportunity to demonstrate that the transaction value approximates with one of the test values stipulated in Article 1.2(b) of the WTO Agreement and thus can be accepted by the customs body.

If the customs body already has the information sufficient to make the conclusion that the transaction value approximates the one of the test values, it shall not request the declarant any additional information proving this fact.

In accordance with Article 4.5 of the CU Agreement on Customs Valuation in applying the foregoing tests the data on differences in commercial levels, quantity levels in elements enumerated in Article 8 of the WTO Agreement and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

The test values are used upon the request of the declarant and cannot be used for the determination of the customs value.

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

Decision of the Collegium of the Eurasian Economic Commission No. 145 "On Approval of the Regulation on Peculiarities of Application of Customs Valuation Methods for Goods, Imported into the Common Customs Border of the Customs Union, in Case of their Damage as the Result of the Accident or Force Major" of 25 June 2013 establishes special provisions concerning the valuation of lost or damaged goods.

**2. How has the provision of Article 4 to allow the importer an option to reverse the order of application of Article 5 and 6 been implemented?**

The aforementioned reverse order of application of Articles 5 and 6 is implemented in Article 2.1 and 8.1 of the CU Agreement on Customs Valuation.

**3. How has Article 5.2 been implemented?**

The provisions of Article 5.2 are implemented in Article 8.4 of the CU Agreement on Customs Valuation.

**4. How has Article 6.2 been implemented?**

The provisions of Article 6.2 are implemented in Article 9.6 of the CU Agreement on Customs Valuation. In accordance with the provisions of Article 9.6 of the CU Agreement, the information supplied by the producer of the goods for the purposes of determining the computed value can be verified in the country of production by the authorities of the Eurasian Economic Union (hereinafter: "EAEU") with the agreement of the producer and provided they give sufficient advance notice to the respective authority of the country of production and the letter does not object to the investigation.

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

In accordance with Article 10.1 of the CU Agreement on Customs Valuation if the customs value of the goods cannot be determined using one of the valuation methods provided for in Articles 1 to 7 of the CU Agreement on Customs Valuation, the customs value is determined

on the basis of data available on the customs territory of the EAEU using reasonable means consistent with legal principles and provisions of the CU Agreement on Customs Valuation.

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

If the customs value is determined under Article 7 of the WTO Agreement, the customs body shall indicate in written form the source of the data used and provide the detailed calculations made on this basis in accordance with Article 10 of the CU Agreement on Customs Valuation.

**(c) Are the prohibitions founded in Article 7.2 delineated?**

The prohibitions contained in Article 7.2 are mandatory for customs bodies, as set out in Article 10.4 of the CU Agreement on Customs Valuation.

**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 provisions of Article 8.2 are implemented in Articles 5.1.4, 5.1.5 and 5.1.6 of the CU Agreement on Customs Valuation respectively. In accordance with the above mentioned provisions in determining the customs value of the imported goods under the provisions of Article 1 of the CU Agreement, the following costs shall be added to the price actually paid or payable: the cost of transport of the imported goods to the airport, sea port or other place of importation of the goods to the customs territory of the EAEU; costs of loading, unloading or reloading or other handling charges associated with the transport of the imported goods to the airport, sea port or other place of importation of the goods to the customs territory of the EAEU; the cost of insurance.

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

Where the exchange of currency is necessary for determination of the customs value, the official exchange rate effective on the day of registration of the customs declaration by the customs body shall be used, unless otherwise provided by the Customs Code and/or international treaties of the EAEU member States. Pursuant to Article 78 of the CU Customs Code for the calculation of customs duties and taxes and the determination of customs value, the customs body of the relevant EAEU Member State is required to use the exchange rate established in accordance with the national legislation of this EAEU Member State. According to Article 56 of Law No. 2155 "On the National Bank of the Republic of Kazakhstan" of 30 March 1995, the National Bank of Kazakhstan establishes and publishes the official exchange rate of foreign currencies with respect to the tenge. This information can be accessed on the website of the National Bank of Kazakhstan (<http://www.nationalbank.kz>).

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

Pursuant to Article 16 of the Customs Code of Kazakhstan, information received by the customs body in accordance with EAEU legal acts and the national legislation of Kazakhstan is used by customs officials exclusively for customs purposes, and cannot be disclosed or disseminated, even to state bodies, except when the transfer of such information to other state authorities is necessary for law enforcement and for judicial proceedings in accordance with the legislation of Kazakhstan.

**9. Questions concerning Article 11:**

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

Concerning the right of appeal, Article 9 of the CU Customs Code and Article 17 of the Customs Code of Kazakhstan provide for the right of appeal and state that any person has the right to appeal against decisions made by the customs bodies, actions (inactions) of the customs body or its officials in accordance with procedures and time-frames established by

the legislation of Kazakhstan. In accordance with Article 12 of Law No. 221-III "On Order of Review of Requests of Natural and Juridical Persons" of 12 January 2007, the decisions of authorities (State and local Government bodies), and the actions (inactions) of officials, can be appealed to a senior official. In cases where there is no senior official, or where the appellant does not agree with the decision of the senior official, the appellant can appeal directly to the court without exhausting all avenues of administrative appeal. This principle is also confirmed in Article 278 of the Code of Civil Procedure of Kazakhstan No. 411-I of 13 July 1999. Thus, importers can appeal against decisions made by the customs body to a senior customs official or to the court.

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

Procedures to inform importer on his right to appeal are established by the following legal acts:

- Code of Civil Procedure of Kazakhstan No.411-I of 13 July 1999;
- Law No. 221-III "On Order of Review of Requests of Natural and Juridical Persons" of 12 January 2007; and
- Code No. 155-II "On Administrative Offences" of 30 January 2001.

**(10) Provide information on the publication, as required by Article 12, of:**

**(a) (i) The relevant national laws:**

Article 4 of the Constitution of the Republic of Kazakhstan of 15 August 1995 stipulates that all laws and international treaties signed by Kazakhstan have to be published.

Law No. 213-I "On Regulatory Legal Acts" of 24 March 1998 provides for the official publication and subsequent official publication of regulatory legal acts. Regulatory legal acts, including those affecting the rights, freedoms and obligations of citizens (other than acts containing State secrets and legally-protected confidential information), are published in the official periodicals. In particular, laws are published in the Bulletin of Parliament; Presidential and Government Resolutions are published in the Collection of Acts of the President and the Government; and legal acts of the Central Executive and other Central State Bodies are published in the Collection of Acts of the Central Executive and Other Central State Bodies. Regulatory legal acts are also officially published in the periodicals "Yegemen Kazakhstan" and "Kazakhstanskaya Pravda". Regulatory Decisions and Resolutions of Maslikhats and Akims are published in local periodicals and are distributed within the respective administrative territorial entity. Subsequent publication takes place in periodicals after the texts have undergone a compliance check with the centralized collection of legal acts of Kazakhstan. The list of regulatory legal acts is published and regularly updated on the website of the Ministry of Justice: <http://www.minjust.kz>.

**(ii) The regulations concerning the application of the Agreement:**

The State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan publishes customs legal acts of Kazakhstan on its official printed publications and on the official website: <http://kgd.gov.kz/ru>. Customs bodies provide access to draft customs legal acts, except for the cases when access to such information may impede the fulfilment of such act or reduce its effectiveness.

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

The judicial decisions and administrative rulings of general application are published in the official publications at websites of the court which issued such decision.

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

Regarding to publication of CU/EAEU Agreements, CU/EAEU Commission Decisions and other EAEU measures, all the information about the activities and decisions of EAEU bodies is available on the website: <http://www.eurasiancommission.org>.

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

Article 10 of the Customs Code of the CU stipulates that all acts of customs legislation shall be published in official or other publications as well as via TV, radio and information technologies. The EAEU Commission shall provide free access for persons concerning on the EAEU legislation published in official publications or on official Internet-sites.

Customs bodies shall consult interested persons on customs procedures issues within their competence, i.e. on customs procedures and customs control of goods and vehicles, customs transit, customs clearance etc.

Consultation on customs procedures issues is carried out by customs bodies in verbal and written forms free of charge. Upon receipt of the written request from an interested person, the customs shall provide information in writing as soon as possible but no later than one month from the date of the receipt of the request.

**11. Questions concerning Article 13:**

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

Requirements of Article 13 of the WTO Agreement are reflected in Article 11 of the CU Agreement on Customs Valuation, paragraph 5 of Article 64 and Articles 85 to 88 of the CU Customs Code. According to paragraph 5 of Article 64 of the CU Customs Code, if during the process of customs declaration of goods, the exact customs value cannot be determined for the reason of absence of documents proving the exact data necessary for its calculation, it is possible to delay the determination of the customs value. In this case, it can be determined on the basis of the documents presented by the declarant, and duties and taxes can be paid on the basis of such customs value.

According to Article 69 of the CU Customs Code, if the procedure for determination of goods customs value has not been carried-out within the time-frame prescribed for release of the goods, such goods shall be released under the guarantee of the declarant to disburse the dutiable payments.

**(b) Have additional explanations been laid down?**

Pursuant to Article 196 of the CU Customs Code, the customs body has to take a decision on release of the goods no later than one working day from the date of acceptance of a customs declaration, as long as the submission includes all the requisite documents and information required by the customs legislation of Kazakhstan. If during the examination of a customs declaration and any other documents or data, customs bodies discover: (i) any signs suggesting that the information stated by the declarant of goods contains fictitious information influencing the amount of dutiable payments; or (ii) that proper supporting evidence is not provided for the declared information, customs bodies are required to release the goods based on the presentation of a guarantee for dutiable payments for the amount of customs payments that might be additionally charged as a result of additional examination. In that case, the goods must be released no later than in one day following the date that a guarantee for dutiable payments is presented. (Article 69 of the CU Customs Code).

**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?**

Pursuant to Article 11 of the CU Customs Code, customs authorities shall provide explanations on the provisions of the customs legislation, including how the customs value is determined in writing.

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

For the situations when it is possible to delay the determination of the customs value, the CU Customs Code prescribes that such cases as well as the order of declaration and control of the customs value, peculiarities of calculation and payment of customs duties, taxes for such cases are to be set forth by the special decision of the EAEU Commission. Such decision currently is being prepared by the EAEU Member states.

**13. How have the Interpretive Notes of the Agreement been included?**

The provisions contained in the Interpretive Notes of the WTO Agreement have been incorporated in the CU Agreement on Customs Valuation. These provisions of the Interpretive Notes (most of which constitute calculation examples) are being implemented through the EAEU Commission decisions. The Collegium of the Commission approved:

- "The Rules on Application of Methods on Determination of Customs Value of Goods According to the Transaction Value of Identical Goods (Method 2) and According to the Transaction Value of Similar Goods (Method 3)" on 30 October 2012, which incorporated illustrative examples of the Interpretative Notes to Articles 2 and 3 of the WTO Agreement on Customs Valuation;
- "The Rules on Application of Method on Determination of Customs Value of Goods According to the Deductive Value Method (Method 4)" on 13 November 2012;
- "The Rules on Application of Method on Determination of Customs Value of Goods According to the Computed Value Method (Method 5)" on 12 December 2012; and
- "The Rules on Application of Method on Determination of Customs Value of Goods According to the Transaction Value Method (Method 1)" on 20 December 2012, which incorporated the remaining relevant provisions of the Interpretative Notes.

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

The provisions of Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods are implemented in Decision of the Collegium of the Commission No. 118 "On Approval of the Rules on the Treatment of Interest Charges under Determination of the Customs Value of Goods" of 22 September 2015.

**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?**

Provisions of paragraph 2 of Decision No. 4.1 of the Technical Committee on Customs Valuation "On the Valuation of Carrier Media Bearing Software, for Data Processing Equipment" are implemented in paragraph 8 of Article 101 of the Customs Code of Kazakhstan.

- For all questions listed above, an indication of the references is requested?**

No.

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