



**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

MALAWI

The following communication, dated 17 March 2017, is being circulated at the request of the delegation of Malawi.

**1. Questions concerning Article 1:**

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

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

The Customs and Excise Act (42:01) (2014)<sup>1</sup> does not list any provisions regulating sales of imported goods between related persons specifically, but only determines that as the value of an imported good should be:

*"(...) the normal price, (...), the price which they would fetch at the time when the duty becomes payable, (...), on a sale in the open market between a buyer and a seller independent of each other."* (Customs and Excise Act (42:01) (2014), Schedule A, Paragraph 1)

Provisions for dealing with sales between related persons in the context of exported goods from the Republic of Malawi are found in Schedule B of the Customs and Excise Act (42:01) (2014).

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

No. The fact that buyer and seller are related within the meaning of Schedule B, Paragraph 2 is not in itself grounds for regarding the transactional value as unacceptable in the case of goods *exported* from the republic of Malawi (Regulations of the Customs and Excise Act (42:01) (2014), Schedule B, Paragraph 4). The act does not list any special provisions in this regard concerning the value of imported goods.

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

Not applicable.

<sup>1</sup> Please see document G/VAL/N/1/MWI/2.

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

Not applicable.

**(b) Price of lost or damaged goods:**

**Are there any special provisions or practical arrangements concerning the valuation of lost or damaged goods?**

Article 99 of the Customs and Excise Act (42:01) (2014) and Regulations No. 118, 119, 120 and 121 of the Customs and Excise Regulations of the Customs and Excise Act (42:01) (2014) provide provisions for procedure in cases where goods were lost or damaged whilst under customs control.

**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?**

Article 111(2) of the Customs and Excise Act (42:01) (2014) states:

*"The value of imported goods shall be determined in accordance with the provisions of Schedule A and customs duties ad valorem or ad rem shall be paid on that value."*

Neither the procedures for the valuation of imported goods for customs purposes listed in Schedule A of the Customs and Excise Act (42:01) (2014) nor the Regulations to the Customs and Excise Act (42:01) (2014) provide provisions relating to Article 4 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

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

Article 111(2) of the Customs and Excise Act (42:01) (2014) states:

*"The value of imported goods shall be determined in accordance with the provisions of Schedule A and customs duties ad valorem or ad rem shall be paid on that value."*

Neither the procedures for the valuation of imported goods for customs purposes listed in Schedule A of the Customs and Excise Act (42:01) (2014) nor the Regulations to the Customs and Excise Act (42:01) (2014) provide provisions relating to Article 5.2 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

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

Article 111(2) of the Customs and Excise Act (42:01) (2014) states:

*"The value of imported goods shall be determined in accordance with the provisions of Schedule A and customs duties ad valorem or ad rem shall be paid on that value."*

Neither the procedures for the valuation of imported goods for customs purposes listed in Schedule A of the Customs and Excise Act (42:01) (2014) nor the Regulations to the Customs and Excise Act (42:01)(2014) provide provisions relating to Article 6.2 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

**5. Questions concerning Article 7:**

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

Article 111(2) of the Customs and Excise Act (42:01) (2014) states:

*"The value of imported goods shall be determined in accordance with the provisions of Schedule A and customs duties ad valorem or ad rem shall be paid on that value."*

Neither the procedures for the valuation of imported goods for customs purposes listed in Schedule A of the Customs and Excise Act (42:01) (2014) nor the Regulations to the Customs and Excise Act (42:01) (2014) provide provisions relating to Article 7 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

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

See answer to Question 5 (a).

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

See answer to Question 5 (a).

**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?**

Not applicable.

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

As laid out in Article 113 of the Customs and Excise Act (42:01) (2014), the rate of exchange for customs purposes will be published on the website of the Reserve Bank of Malawi.

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

Not applicable.

**9. Questions concerning Article 11:**

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

As outlined in Article 112 of the Customs and Excise Act (42:01) (2014), importers have the right to appeal to the controller determining the value of imported goods. Disputes as to the amount of duty payable are outlined in Part XIV of the Customs and Excise Act (42:01) (2014).

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

Not applicable.

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

**(a) (i) the relevant national laws;**

Relevant national laws and regulations are published in the Malawi Government Gazette.

**(ii) the regulations concerning the application of the Agreement;**

Relevant national laws and regulations are published in the Malawi Government Gazette and can be found in the Customs and Excise Act (42:01) (2014).

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

See answer to Question 10 (a)(ii).

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

See answer to Question 10 (a)(ii).

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

No further rules are anticipated at this stage.

**11. Questions concerning Article 13:**

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

Article 6 of Schedule A of the Customs and Excise Act (42:01) (2014), is concerned with the case of missing documentary evidence relating to the clearance of goods.

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

Not applicable.

**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?**

Such a provision exists for exporters, but is not listed as a requirement in Schedule A of the Customs and Excise Act (42:01) (2014), which is concerned with the valuation of imports.

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

Not applicable.

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

Not applicable.

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

Interest charges are not listed as a component of the value on which duties are applied (see Schedule A of the Customs and Excise Act (42:01) (2014)).

**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?**

Not applicable.

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