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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

NICARAGUA

The following communication, dated 21 July 2017, is being circulated at the request of the delegation of Nicaragua.

1. Questions concerning Article 1:

(a) Sales between related persons:

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

There are no special provisions governing sales between related persons; the requirements to be followed are therefore those laid down in the Agreement.

However, Article 201 of the Implementing Regulations for the Central American Uniform Customs Code (RECAUCA) provides that, for the purposes of Article 15(4)(h) of the Agreement, persons shall be deemed to be "of the same family" when they are spouses or relatives within the fourth degree of consanguinity or second degree of affinity; and Article 9 of Law No. 421 (Customs Valuation Law and Amendments to Law No. 265 Establishing Self-Clearance for Imports, Exports and Other Regimes) provides that two persons shall be considered related when they are in a stable *de facto* union.

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

The fact of intercompany prices is not *prima facie* considered as grounds for regarding the respective prices as being influenced.

(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 Articles 11 and 12 of Decree No. 74-2002 (Implementing Regulations for the Customs Valuation Law and Amendments to Law No. 265 Establishing Self-Clearance for Imports, Exports and Other Regimes) and Article 204 of the Implementing Regulations for the Central American Uniform Customs Code (RECAUCA), notifications relating to the administrative procedure to establish the truth or accuracy of the declared customs value, including the questions that can be put to the importer to determine whether the relationship between the buyer and the seller has influenced the price of the goods, must be communicated in writing by the Customs Authority.

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

Article 1.2(b) of the Agreement has been implemented as provided for therein.

(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 no special provisions or practical arrangements 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 Articles 5 and 6 been implemented?

Article 195 of the Implementing Regulations for the Central American Uniform Customs Code (RECAUCA) provides that *"The order of application of the valuation methods established in Articles 5 and 6 of the Agreement shall be reversed, as provided for in Article 4 thereof, only when the Customs Authority grants the request submitted by the importer"*. This provision is consistent with paragraph 3 of Annex III to the Agreement.

Article 196 of the RECAUCA establishes the procedure for requesting a reversal of the order of the valuation methods set out in Articles 5 and 6 of the Agreement.

3. How has Article 5.2 been implemented?

Article 197 of the Implementing Regulations for the Central American Uniform Customs Code (RECAUCA) provides that *"The valuation method established in Article 5.2 of the Agreement may be applied in accordance with the provisions of this paragraph, whether or not the importer so requests"*. This provision is consistent with paragraph 4 of Annex III to the Agreement.

4. How has Article 6.2 been implemented?

Article 6.2 of the Agreement has been implemented as provided for therein.

5. Questions concerning Article 7:

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

No other specific provisions have been made for making value determinations pursuant to Article 7 of the Agreement.

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

The provisions laid down in Article 7 itself.

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

The prohibitions found in Article 7.2 of the Agreement are considered sufficient to ensure the implementation of this provision.

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?

They have been handled in Article 188 of the Implementing Regulations for the Central American Uniform Customs Code (RECAUCA), which provides that, in addition to the items

referred to in Article 8.1 of the Agreement, the following shall be included in the customs value:

- (a) the cost of transport of the imported goods to the port or place of importation;
- (b) the loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
- (c) the cost of insurance.

Customs value is not calculated on the basis of either f.o.b. prices or ex-factory prices.

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

The rate of exchange is published by the Central Bank of Nicaragua on its website: <http://www.bcn.gob.ni>.

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

Information provided under Article 10 of the Agreement is treated as confidential public information in accordance with Article 15(c) of Law No. 621 on Access to Public Information, which provides as follows: "Confidential banking information; trade, industrial, scientific or technical secrets belonging to third parties or to the State; intellectual property; and industrial, commercial or confidential information that the government has received as the result of compliance with a requirement or procedure, without prejudice to the public nature of the Intellectual Property Registry, pursuant to the relevant laws".

Furthermore, Article 18 of this Law provides that "Government officials and employees shall be held liable for breach of confidential information".

9. Questions concerning Article 11:

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

Chapter I, Title VIII, of the Implementing Regulations for the Central American Uniform Customs Code (RECAUCA) establishes the avenues of appeal. An appeal for review may be submitted to the higher authority of the Customs Service. Appeals against final decisions reached by this higher authority are heard by the Customs and Tax Administrative Tribunal. Administrative avenues are then exhausted and any further appeals must be made through legal channels.

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

In the case of decisions by the higher authority of the Customs Service and the Customs and Tax Administrative Tribunal, the recipient of the decision is informed of his right to further appeal under the terms of the law.

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

(a) (i) the relevant national laws;

Laws are published in the Official Journal *La Gaceta*, which is the official communication tool of the State of the Republic of Nicaragua, and subsequently on the website of the Directorate-General of Customs Services (DGA): <http://www.dga.gob.ni>.

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

Regulations are published in the Official Journal *La Gaceta* and subsequently on the website of the Directorate-General of Customs Services (DGA): <http://www.dga.gob.ni>.

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

Administrative rulings of general application relating to the Agreement are published by the Directorate-General of Customs Services (DGA) on its website: <http://www.dga.gob.ni>.

Judicial decisions are notified directly to the parties to the proceedings and court rulings are published on the website of the Judiciary: <http://www.poderjudicial.gob.ni/w2013/default.asp>.

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

The general or specific laws being referred to in the rules of implementation or application are published in the Official Journal *La Gaceta* and subsequently on the website of the Directorate-General of Customs Services (DGA).

Specific procedures for the implementation and application of the Agreement are published in "technical circulars".

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

In accordance with Article 150(10) of the Constitution of the Republic of Nicaragua, the law-making process provides for the subsequent publication of rules and, in turn, of administrative decisions. There are, however, currently no plans for further rules covering any specific topics in the field of customs valuation.

11. Questions concerning Article 13:

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

Pursuant to Article 52 of the Central American Uniform Customs Code (CAUCA) and Article 202 of the Implementing Regulations for the Central American Uniform Customs Code (RECAUCA), the importer has the possibility of withdrawing goods from customs subject to guarantee. Provision is made for several types of guarantee.

(b) Have additional explanations been laid down?

The Directorate-General of Customs Services established the procedure for release subject to guarantee in Administrative Rulings No. 135-2011 and No. 064-2017, as published on its website.

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?

Article 207 of the Implementing Regulations for the Central American Uniform Customs Code (RECAUCA) provides that the importer may request, within three days of the date of notification of the determination of the customs value by the Customs Authority, an explanation of the method on the basis of which the customs value of his goods was determined. The Customs Authority is required to reply within ten days of the date on which it received the request.

Both the importer's request and the Customs Authority's reply must be in writing.

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

There are no further regulations concerning the obligation to give an explanation in writing as to how the customs value was determined.

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

Article 44 of the Central American Uniform Customs Code (CAUCA) provides that the value *"... shall be determined in accordance with the provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 and of the corresponding Chapter of the Implementing Regulations"*.

Furthermore, Article 1 of Law No. 421 ("Customs Valuation Law and Amendments to Law No. 265 Establishing Self-Clearance for Imports, Exports and Other Regimes") provides that *"The determination of the customs value of imported goods, whether or not they are exempt or free from customs duties and other import taxes, shall be governed by the provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, as well as those of this legislation and of applicable national and international regulations"*.

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

Article 190 of the Implementing Regulations for the Central American Uniform Customs Code (RECAUCA) and Article 7 of Law No. 421 (Customs Valuation Law and Amendments to Law No. 265 Establishing Self-Clearance for Imports, Exports and Other Regimes) provide that interest accrued under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be considered as part of the customs value, provided that:

- (a) the interest is distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement has been made in writing; and
- (c) where required, the buyer can demonstrate that:
 - (i) such goods are sold at the price declared as the price actually paid or payable; and
 - (ii) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the financing was provided.

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 Republic of Nicaragua has not adopted the practice referred to in paragraph 2 of this Decision and therefore applies the provisions of paragraph 1 thereof.

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

Not applicable.
