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Committee on Customs Valuation

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

CHECK-LIST OF ISSUES

SOUTH AFRICA

The following submission, dated 31 October 2014, is being circulated at the request of the delegation of South Africa.

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**Reply by South Africa**

As required by Article 22 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, the South African legislation on customs valuation and administrative procedures are consistent with the provisions of the Agreement. The provisions of the Agreement were incorporated into Chapter 7 of the Customs Duty Act, 2014 (Act No. 30 of 2014), hereinafter referred to as the "Act".<sup>1</sup>

To access the Customs Duty Act, 2014 (Act No. 30 of 2014) and the Customs Control Act, 2014, (Act No. 31 of 2014) please click on the following link:

<http://www.sars.gov.za/Legal/Primary-Legislation/Pages/Acts-administered-by-the-Commissioner.aspx>

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<sup>1</sup> See document G/VAL/N/1/ZAF/1.

**1. Questions concerning Article 1:****(a) Sales between related persons:****(i) Are sales between related person subject to special provisions?**

Provisions for dealing with sales between related person in the context of the transaction value method are found in Sections 129(1)(i) and 130.

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

No. the fact that the buyer and seller are related within the meaning of Section 130(1) is not in itself grounds for regarding the transaction value as unacceptable. Section 130(3) of the Act provides that the transaction value may be used if the person clearing the goods proves that the relationship between the seller and buyer did not influence the price paid or payable for the goods.

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

Section 117(4) prescribes that the customs authority must give notice of any value determination made by it to the person clearing the goods.

Furthermore, in terms of the Constitution and national legislation of South Africa any person is entitled to:

- Prior notice of the intended decision;
- A prior hearing before the decision is taken;
- Clear grounds for the decision;
- Adequate notice of the right to request reasons for the decision.

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

Section 130(3)(b) of the Act provides for the use of the "test values" provided for in Article 1.2(b).

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

No special provisions exist concerning the valuation of lost or damaged goods. Section 113 of the Customs Duty Act prescribes the international instruments that are binding for the purpose of valuating imported goods. The international instruments include the instruments issued by the Technical Committee on Customs Valuation of the WTO including the Explanatory notes.

**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?**

Section 128(2) allows the option to reverse the order of application of Articles 5 and 6.

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

Article 5.2 is provided for in Section 134(3) of the Act.

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

The entire Agreement has been given legal status in Section 113 of the Act. Specific provision of this Article was not regarded necessary as it is accepted in South African law that the customs authorities in South Africa have no extra territorial jurisdiction over an exporter in a foreign country.

**5. Questions concerning Article 7:**

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

Section 136 provides for value determinations pursuant to Article 7.

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

Section 117(4) prescribes that the customs authority must give notice of any value determination made by it to the person clearing the goods.

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

Yes, in Section 136(2).

**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?**

South Africa uses an FOB system of customs valuation. Section 131 reflects this position. In those transactions in which the transaction is based solely on ex-factory prices, such prices are accepted as the basis for transaction value.

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

In terms of Section 142 the rate of exchange will be published on the South African Revenue Service (SARS) website.

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

The requirement of confidentiality is prescribed in Section 21 of the Customs Control Act, No. 31 of 2014. This section is a general provision applicable to all customs matters.

**9. Questions concerning Article 11:**

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

Section 125 of the Act prescribes the rights of appeal available to the importer or any other person and includes administrative appeals. Provision is also made for the right of appeal without penalty to a judicial authority.

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

In terms of Sections 117(4) and 118(5) of the Act the customs authority must give notice to the person clearing the goods of any value determination or re-determination of any value determination made by the customs authority. It is administrative practice to advise an importer in this notice of his right of appeal.

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

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

Relevant national laws are published in the Government Gazette. It is used by government as the official way of communicating to the public.

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

No customs valuation regulations have been made and none are contemplated at this stage. However, if rules are made it is published in the Government Gazette.

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

Judicial decisions are published in the South African Law Reports. Section 148 of the Act provides for the publication value determinations and re-determinations.

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

See answers to 10(a)(i) and 10(a)(ii) above.

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

No further rules are anticipated at this stage. Administrative material will be issued as the need arises.

**11. Questions concerning Article 13:**

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

Section 102(1) read with Section 103 of the Customs Control Act provides for the release of goods from customs control on lodgement of security.

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

No.

**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, in section 117(4). Also see answer to the question 1(a).

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

No.

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

See Section 113(1)(b).

**14. How have the provisions of the decision of 26 April 1984 on the treatment of Interest Charges in the Customs Value of Imported Goods (VAL/6/Rev.1) been implemented?**

See Section 131(4)(h).

**15. For those countries applying paragraph 2 of the decision of 24 September 1984 on the Valuation of Carrier Media bearing Software for Data Processing Equipment (VAL/8), how have the provisions of this paragraph been implemented?**

The provisions of the paragraph are contained in the External Directive: Valuation of Imports published on the SARS website which states the following:

"In the valuation of recorded computer programmes classified in tariff headings 8523 only the cost or value of the carrier medium of which the data or instruction are recorded must be taken into account. The Customs value shall not, therefore, include the cost or value of the data or instructions, the so-called intellectual value, provided that this is separately distinguished from the cost or the value of the carrier medium on the invoice."

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