

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/16

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Committee on Customs Valuation

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Comments on the Legislation of Botswana and Responses by Botswana

Below are reproduced the comments made on the Botswanan legislation (VAL/1/Add.16) by a Party and the responses received from the Botswanan authorities in accordance with the procedure agreed by the Committee at its last meeting (VAL/M/13, paragraph 10).

CUSTOMS AND EXCISE DUTY (AMENDMENT) ACT 1983

1. Section 11

Comment

The phrase "as a condition of sale" does not appear in this text substituted as section 69(9) of the principal Act, i.e. the definition of "price actually paid or payable", but it is part of paragraph 8 of the Protocol to the Agreement. The reason for this omission is not clear.

Response

Botswana is a member of the Southern African Customs Union which is comprised of the Republic of Botswana, Kingdom of Lesotho, Kingdom of Swaziland and the Republic of South Africa. Under the Customs Union Agreement of 1969 member States of the Union apply laws relating to customs, excise and sales duty similar to such laws in force in South Africa.

South Africa has not availed itself of the provisions of the Protocol to the Agreement and has therefore drafted its definition of "price actually paid or payable" (see section 65(9)(iv) on page 7 of document VAL/1/Add.15) in terms of paragraphs 1 and 4 of the Interpretative Note to Article 1 of the Agreement, and Botswana has done likewise in section 69(9)(d) of her Act.

2. Section 12

Comment

The term "transaction value" is used in the text relating to the deductive, computed and fall-back methods of valuation (see section 12(7),

(8) and (9)). The use of the term in the context of these methods is not contemplated by the Agreement. An explanation is desirable.

Response

Like South Africa (see section 65(1) on page 4 of document VAL/1/Add.15) Botswana has defined the term "value for customs duty purposes" in 69(1) of its Act as "... the transaction value thereof". The reference to "transaction value" in sections 70(7), (8) and (9) of the Botswana Act is therefore in fact a reference to the term "customs value".

DEPARTMENTAL INSTRUCTION NO.29

3. Paragraph 7.06

Comment

The meaning of the phrase "the transaction value is based on a cash price" is not understood.

Response

The phrase "the transaction value is based on a cash price" is amended to read "the transaction value is based on the price paid or payable".

4. Paragraph 7.09

Comment

Clarification of the grounds upon which the amount of a prepayment discount actually earned is added back to the "price actually paid or payable" is necessary having regard to the fact that the list of items set out in Article 8 of the Agreement is exhaustive and does include such an item.

Response

The paragraph is deleted and a new one inserted to read "where payment is made by the buyer before full delivery of the goods and a discount is given because of the prepayment the net price would be the transaction value".

5. Paragraph 8.01

Comment

The phrases "open market price" and "freely available" are not understood. An explanation of these terms within the meaning of the Agreement is desirable having regard to the definition of the transaction value in section 70(1) of the principle Act.

Response

The paragraph is deleted and a new one inserted to read as follows:
"The basic concept of transaction value is that of the price paid or payable in relation to the imported goods being valued. It follows, therefore, that discounts and price reductions made available by the sellers to unrelated buyers or related buyers (within the meaning of Article 15 to the Agreement) provided in the latter case the discounts or price reductions are not given as a result of the relationship, such discounts and reductions are allowable in determining the dutiable value of the goods. Cases of doubtful trade and quantity discounts, i.e. where there is reason to doubt their validity or non-compliance with Article 1 of the Agreement, should be referred to Headquarters. Trade and quantity discounts granted retrospectively are not allowed.

6. Paragraph 14

Comment

The meaning of the phrase "non-open market" is also not understood. An explanation would be appreciated.

Response

The heading "Non-Open Market Transactions" is deleted and a new heading inserted as follows: "Valuation Methods Other Than the Primary Method".

7. General

Comment

Information on the legal status of the Departmental Instruction No.29 would be appreciated. How is the information in the Instruction made available to the public?

Response

The Departmental Instructions are not legal publications. They are internal administrative documents designed to simplify and clarify customs procedures to the staff of the customs department and are not made available to the public.