

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Customs Valuation

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

Legislation of Argentina

Supplement

The following communication, dated 26 October 1994, has been received from the Permanent Mission of Argentina.

I have the pleasure to transmit herewith legislation concerning the Customs Import Valuation System (National Customs Administration Resolution No. 3079/93 of 30 November 1993).

*English and Spanish only.

Resolution No. 3079

Buenos Aires, 30 November 1993

HAVING REGARD to Laws 23.311 and 23.905, Decree 1026/87 and Resolution 1166/92;

WHEREAS:

It is necessary to establish customs regulations for the application of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade;

There is also a need to establish the rules of valuation control applied by the Customs Service;

Based on the concept established by the Customs Cooperation Council in its Handbook on Customs Valuation Controls, it is desirable that these controls should be centralized in a single agency of this National Administration which shall assume overall responsibility for valuation;

In the context of the selectivity referred to in Resolution 1166/92 (BANA No. 46/92), these controls should be carried out after the goods have been released from customs;

Provision should also be made for the active participation of the importers in view of the demands made upon them by the Customs Service for valuation purposes;

In the exercise of the powers conferred by Article 23(i) of Law No. 22.415;

Therefore,

THE NATIONAL CUSTOMS ADMINISTRATOR

Decides the following:

Article 1: The Table of Contents contained in Annex I, Annex II - Valuation Control Regulations, Annex III - Control of Value in Import Applications, and Annex IV - Enquiries into the Truth and Accuracy of Declarations of Value, which form an integral part of this Resolution, are hereby approved.

Article 2: Resolutions A.N.A. 2778/87, 3141/87, 79/88, 1072/89, 468/91, 1649/92, 1875/93 and all provisions contrary to the present Resolution are repealed.

Article 3: The present Resolution shall enter into force ten (10) days after its publication in the Official Gazette.

Article 4: This Resolution shall be registered and published in the Official Gazette and in the Journal of the National Customs Administration. Copies shall be transmitted to the Department of Revenue, the Directorate-General of Taxation, the Customs Agents' Centre and the other constituent bodies of the Customs Consultative Council, the MERCOSUR Administrative Secretariat (Montevideo, Uruguay), and the Secretariat of the Multilateral Convention on Cooperation and Mutual Assistance between the National Customs Services of Latin America, Spain and Portugal (Mexico City), and the Resolution shall then be filed.

[signed] Gustavo Andres Parina
National Customs Administrator

ANNEX I

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ANNEX II

Valuation Control Regulations

(1) The customs value shall be determined on the basis of cost, insurance, freight (c.i.f.) notwithstanding the form in which the seller concluded the sale with the buyer and, if freight and/or insurance costs were not included before the goods reached the first port of entry or the place where they entered customs territory, they shall be added in order to determine the customs value.

(2) In all those import operations in which the importer, in order to arrive at the customs value, deducts a buying commission, the Customs Service shall require the production of evidence justifying such a deduction, to its own satisfaction.

In this respect and merely for purposes of illustration, the following means of proof, *inter alia*, may be mentioned: the buying commission agreement signed by the importer and the commission agent, documentary evidence of payment of a commission, etc.

(3) Under the terms of Article 1 of the GATT Agreement and its Interpretative Notes, the price paid or payable corresponds to the payments made or to be made at the time of customs valuation. If payments have been made in the form of advances prior to the time of valuation, they shall be included for the purposes of determining the customs value. The aforementioned shall not imply that the transaction value, where appropriate, should not be accepted. It shall be the responsibility of the importer to provide this information.

(4) The importer shall indicate whether, as a condition of sale, the transaction is to be settled through direct payment - transfer of foreign exchange - or whether the importer has taken over some or all of a debt contracted by the seller with a third party, or with the importer or buyer himself. If that is the case, the total of both amounts shall constitute the customs value subject to duty.

(5) In accordance with the provisions of Article 8 of Decree No. 1026/87, the information communicated daily to the Argentine Customs and the Customs Agents' Centre on the basis of the rates fixed by the Banco de la Nación Argentina and by the Central Bank of the Argentine Republic for currencies not quoted by the former, shall constitute sufficient means of disclosure. A copy of this information shall be displayed visibly in all customs offices for the information of the interested parties.

(6) If the importer fails to comply with the demand made by the customs service by providing evidence in support of the declared value, then in accordance with the compulsory procedure a complaint shall be lodged with the appropriate authority for presumed infringement of Articles 100 and 994 of the Customs Code.

ANNEX III

Control Of Value In Import Applications

The Analysis and Information Division, after receiving import clearance files, in accordance with Article 6 of Resolution 1166/92, shall:

- 1.1 Register the files by import clearance number, name of the importer, registration number, customs office concerned and routing number;
- 1.2 Transmit them within two days to the respective Valuation Services according to their specialization by branch, and record this fact in the register mentioned in paragraph 1.1;
- 1.3 Once the import clearance file has been received by the corresponding Valuation Service, it shall, within ten days, take one of the following measures, which shall also be noted in the register mentioned in paragraph 1.1:
 - 1.3.1 Accept the documented value: the verifying officer shall then record this in the clearance document (copies (parciales) 1 and 2), by placing his signature and stamp on the back of the documents abovementioned copies, under the heading "value approved". The Valuation Unit shall subsequently transmit the file to the Buenos Aires Customs Registry Office or to its equivalent at local customs offices.
 - 1.3.2 Suspend the documented value: a security may then be requested to cover the difference in value observed. This shall be noted by stamping the back of the import clearance file and copies (parciales) 1 and 2, together with a justificatory report concerning the reason for suspending the value and for requesting a security, where applicable.

If the suspension does not require a security, the import clearance file shall be sent to the Analysis Section for examination. The Analysis Section must complete its examination within 120 days of the abovementioned measure being taken, with the elements added to the file at that time. Nevertheless, as far as possible all the necessary steps and inquiries, with which the importer shall cooperate directly on pain of application of Articles 100 and 994 of the Customs Code, shall have been completed. Where duly justified, and with the intervention of the Technical Secretary, this examination may be extended for a further 120 days.

If the cause of suspension is based solely on the existence of a relationship between the importer and the exporter, within the meaning of Article 15:4 of the GATT Agreement (Law 23.311) the Division shall not require any security but shall merely indicate that fact, without making the report mentioned above, and forward the import clearance file to the Import Valuation Division for examination.

If, as a result of the suspension, a security is required, the percentage of that security and the basis for its calculation shall be recorded by the Valuation Service concerned (parciales) 1 and 2 of the import clearance document, which it shall then transmit with these observations, while retaining the import clearance file together with its supplementary documentation, to the Import Division-Assessment Section, of the Buenos Aires Customs or to the equivalent department at local customs offices, so that they may proceed with the calculation of the security and request its deposit in one of the forms authorized by law, within 5 days of such notification.

Once the security has been deposited with the customs office where the import operation is registered, copy 2 of form OM 1190, in which this information shall have been recorded, shall be returned to the Analysis and Information Division, which shall add it to the import clearance file and carry out the relevant examination within 10 days thereafter.

Should the importer fail to furnish the security required within the stipulated period, copies (*parciales*) 1 and 2 shall likewise be transmitted to the Analysis and Information Division, which, without prejudice to pursuing its examination of the documented value, shall take the necessary steps in the relevant areas with a view to the suspension of the importer from the Register of Importers and Exporters, initiation of any legal proceedings required under Articles 100 and 994(b) of the Customs Code, and so informing the Commission created under Resolution No. 1166/92.

In cases where value has been suspended, the Technical Valuation Department shall assess the desirability of action by the Directorate-General of Taxation.

Likewise, the Analysis and Information Division shall keep a register of securities lodged and their expiry dates.

Such securities shall be valid for a period of 120 days from the date of deposit. This period may be extended once by the abovementioned Division, following intervention by the Technical Secretary, for a further 180 days, if necessary for the purposes of the investigation. The customs office where the import operation is registered shall be notified of this fact. If the security has not been extended by the Division, it shall automatically be released and made available to the parties concerned, who may request its refund by submitting the relevant form OM 1190 "A".

- 1.3.3 Carry out the appropriate reconstructions and/or adjustments of value, establishing the relevant charges in such cases, based on the provisions of Article 6, clause 3, of Resolution No. 1166/92. For this purpose it shall apply the following procedure in conformity with the General Introductory Commentary of the Agreement on Implementation of Article VII of the GATT.

The Analysis and Information Division shall draw up daily, broken down by customs office of registration, a listing of the reconstructions and/or adjustments of value which in principle it considers applicable. The listing shall briefly indicate the basis for them. The Analysis and Information Division shall transmit the listing to the customs offices of Buenos Aires and Ezeiza and other customs offices through the Ministry of the Interior, to be displayed visibly for the information of importers and/or customs agents submitting customs clearance documents. The latter may provide information and/or hold consultations to enable the Customs Service finally to determine the applicable valuation basis, either endorsing or modifying its original position. These listings may be made available on request to the Customs Agents' Centre and related Chambers. For this purpose persons submitting customs clearance documents are granted the following time-limits:

- (a) For operations registered in the Buenos Aires and Ezeiza Customs Offices: 10 days;
- (b) For operations registered in local customs offices: 20 days.

These periods shall run from the date when the listings concerned are first displayed.

The persons submitting the customs clearance documents, importers and/or customs agents, may be represented in this instance and solely for this purpose by some other person, who

must present for this purpose specific authorization from the person represented in the form of a simple note signed by the latter with certification of the signature by the Customs Service.

Once the consultation between the Analysis and Information Division and the importer or his representative has been concluded or the time-limit established for the purpose in subparagraphs (a) and (b) above has expired, the Valuation Service concerned shall take action within 10 days. Where it considers that the value should be reconstructed, it shall transmit the import clearance file to the Assessment Section or its equivalent at local customs offices for assessment, notification and collection of the charges for the difference in the corresponding taxes.

- 1.3.3(1) Publication of measures with respect to import clearance operations by the Technical Valuation Department: the Analysis and Information Division shall publish daily the measures taken with regard to each and every one of the import clearance applications received for the information of those concerned, through listings which it shall prepare for the purpose and which shall be displayed visibly by the Technical Valuation Department and in the Customs Agents' Room on the ground floor of the main building of the National Customs Administration, and related Chambers.

With respect to operations registered in local customs offices, the Analysis and Information Division shall prepare the relevant data weekly and transmit it to the said offices through the Ministry of the Interior for display in the appropriate customs office.

- 1.3.3(2) Challenging of charges claimed on grounds of difference in value.

In the event of a challenge by a person submitting a customs clearance application, and in order to safeguard the tax revenue claimed and ensure that the importer pays what is due, where the customs service has granted the importer release of the merchandise through the red channel without having carried out the relevant tax determination concluding in the definitive examination of the documented value, deposit of a security shall be required with respect to the amount of the charges claimed, with the formalities provided for in Section V, Title III of Law 22415 and under threat of application of the measures provided for in Article 994, clauses (b) (c), of the same law, within five days of the challenge being made, without prejudice to the continuation and final resolution of the challenge.

- 1.3.4 File a complaint under Article 1082 and other relevant provisions of the Customs Code concerning presumed irregularities observed based on available studies of cases of identical or similar goods and/or where the declared values were considered unreasonable taking into account the commercial practice of the branch of industry concerned, and unacceptable as an expression of the real transaction value, in the light of the nature, kind, quality, quantity, origin, etc., of the goods.

In such cases, the complaint shall be filed by the Chief of the Disputes Department (for import clearance documents registered at the Buenos Aires and Ezeiza Customs) or the Administrator of the customs office where the clearance document is registered (in the case of files registered at local customs offices) for the purposes of the application of Article 1087 of the Customs Code, on grounds of presumed infringement of Article 954 of that same code. In cases where Article 864 of the Customs Code applies, the complaint shall be addressed to the Secretariat for Inspection, Customs Police Department.

1.3.5 Communication to the Directorate-General of Taxation

The Chief of the Disputes Section, the Administrator of the local customs office or, as appropriate, the Secretariat for Inspection (in preventive proceedings) in cases where proceedings are initiated, shall, within 48 hours and observing the prescribed procedures, send a copy of the import clearance document to the branch of the Directorate-General of Taxation in the relevant customs jurisdiction so that it may note the values declared by the importer and determine the implications of those values for the taxes payable to it and, where appropriate, carry out the investigations it deems necessary under the Criminal Tax Law (Law 23.771).

Notwithstanding the initiation of proceedings, the importer may apply to the authority to which the complaint is addressed for the release of the goods subject to security, in conformity with Article 13 of Law 23.311 and Article 453 of Law 22.415. The request may be granted, except where the proceedings have been initiated on account of presumed irregularities provided for and punished under Article 864 of the Customs Code.

- 1.3.6.** In the case of reconstructions of values given in import clearance documents that were agreed to by the person submitting the documents, the Buenos Aires and Ezeiza Customs and local customs offices shall, in future operations occurring in the same circumstances as those that gave rise to the abovementioned reconstructions, transmit to the Analysis and Information Division the documentation concerning such operations without hindering the "Green Channel" procedure, indicating the number of the import clearance document concerned.

ANNEX IV**Enquiries Concerning the Truth or Accuracy of Declarations of Value**

- (a) For the purposes of Annex II to this resolution, the Technical Valuation Department shall carry out the valuation enquiries for which it is competent within the framework of Article 17 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and paragraph 7 of its Protocol as adopted in Law No. 23.311.
- (b) For this purpose the importer shall be requested to provide all the evidence necessary to establish the truth of the value declared, since the importer is responsible for providing such information pursuant to Advisory Opinion No. 19.1 issued by the Customs Cooperation Council at the fifteenth session of the Technical Committee on Customs Valuation.
- (c) In adopting any of the measures provided for in Article 6 of Resolution No. 1166/92, the Valuation Services of the Analysis and Information Division may seek the full cooperation of the importer by requiring him to submit quotations, catalogues, brochures, price lists and commercial and technical documentation, etc.
- (d) If necessary, they may:
- (1) Submit for the signature of the National Administrator, through the Technical Valuation Department, a request to the Customs Service of the country of consignment of the goods for an authenticated copy of the customs document by which it authorized the exportation of the goods to Argentina, seeking the assistance of the Argentine Foreign Service for that purpose.
 - (2) Request the foreign Customs Administration and/or the Argentine Foreign Service to furnish information on the export prices prevailing in the foreign market concerned for the goods that are the subject of the enquiry.
 - (3) Request the National Administrator to carry out investigations abroad in keeping with Article 23(r) of Law 22.415. When the investigation has been concluded and the definitive value determined, this should be notified to the party submitting the documentation as well as to the Directorate-General of Taxation when the latter has taken action under sub-paragraph 1.3.5 of Annex III.