

GENERAL -AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Customs Valuation

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Checklist of Issues

Addendum

AUSTRIA

At its meeting held on 5 May 1981, the Committee on Customs Valuation decided, inter alia, that Parties should reply in writing to the points contained in the revised checklist of issues relating to national legislation on customs valuation (VAL/2/Rev.1).

The reply submitted by the delegation of Austria is reproduced hereunder.

Question No.

1. (a) (i) Article 1.1 (d) and the substance of Article 1.2 (a) of the Agreement are included in the national legislation (Section 3, paragraph 2, item 4, and Section 3, paragraph 3 of the Customs Valuation Act 1980).
- (ii) There are no special provisions on intercompany prices. The fact of intercompany prices is in general prima facie not considered as grounds for regarding prices as being influenced; it could however be regarded as an indication.
- (iii) Already according to the general procedural provisions of the Federal Law on Taxation, Austrian Federal Gazette No. 194/1961, the parties concerned shall be given a full opportunity to claim their rights. In addition, before a final decision is taken, the parties shall have a full opportunity to take note of and to present arguments on behalf of all evidence that has been used and of the results of taking the evidence (obligatory principle to give the parties a hearing according to Sections 115, paragraph 2 and 183, paragraph 4 of the Federal Law on Taxation). Where the Customs office deviates from statements made by

the parties concerned in the Declaration for the Determination of Customs Value, the Customs office must generally disclose in writing all the issues on which a deviation to a party's disadvantage comes into question (Section 161, paragraph 3 of the Federal Law on Taxation). Therefore, as the necessary relevant procedural provisions are already embodied in the Federal Law on Taxation, it was unnecessary to insert further provisions in this respect into the Customs Valuation Act.

(iv) Article 1.2 (b) is included in Section 3, paragraphs 4 and 5 of the Customs Valuation Act. It is noted that because of objections expressed by the constitutional service on behalf of the expression "closely approximates" (indetermined legal expression) this expression had to be replaced in Section 3, paragraph 4 by "corresponds to". However, to conform with the intentions of the Code, the expression mentioned before was extended by the words "taking into account of price fluctuations normal in the trade concerned", thus taking into consideration the Interpretative Note to Article 1, paragraph 2 (b) ("... whether the difference in values is commercially significant"). The provision of Article 1.2 (b) (iv) of the Agreement according to Article I, paragraph 1 of the Protocol has not been included in the national legislation.

- (b) There are no special legal provisions; however, there is a practical arrangement as follows:

Where the loss or damage has occurred before the date of lodging the Declaration for the Determination of Customs Value and where the invoice already allows for this fact, the customs value is reduced accordingly.

Where, however, the invoice does not allow for this fact at the time of lodging the Declaration for the Determination of Customs Value, the dutiable value is based on the invoice price. If the buyer later on can demonstrate that he was accorded a credit by the seller, this fact will lead to a reduction of the dutiable value. Payments resulting from insurances for the benefit of the buyer, are considered as an indication of the depreciation of the goods.

2. The option according to Article 4 of the Agreement is included in Section 2, paragraph 3 of the Customs Valuation Act.

3. Article 5.2 of the Agreement is included in Section 6, paragraph 3 of the Customs Valuation Act.

4. The substance of Article 6.2 of the Agreement is included in Section 7, paragraph 2 of the Customs Valuation Act. Due to corresponding constitutional provisions (Article 3.1) it was unnecessary to include also the first sentence of Article 6.2.
5. (a) The substance of Article 7 and the related Interpretative Note, item 2, are included in Article 8 of the Customs Valuation Act.

(b) Vide answer to 1. (a) (iii).

(c) The prohibitions found in Article 7.2 are delineated in Section 8, paragraph 2, items 1 to 7 of the Customs Valuation Act.
6. All the costs, charges and expenses enumerated in Article 8.2 of the Agreement incurred up to the crossing of the Customs frontier to the extent that they are not already included in the transaction value according to Section 3 of the Customs Valuation Act shall be included in whole in the customs value of imported goods (vide Article 9, paragraph 1, item 2 (a) to (c) of the Customs Valuation Act).
7. The rate of exchange is published in the "Official Gazette of the Wiener Zeitung" and in the "Official Gazette of the Austrian Finance Administration".
8. Generally, confidentiality is embodied in Article 20, paragraph 3 of the Federal Constitutional Law and specially with regard to customs duties and taxes in Section 48 (a) of the Federal Law on Taxation. It was therefore unnecessary to insert a further provision into the Customs Valuation Act.
9. (a) Decisions of the Customs office are open to appeal within a time-limit of two months. This time-limit can be extended upon request, if necessary repeatedly, for valid reasons. (Sections 243 and 245, paragraph 1 and 3 of the Federal Law on Taxation.)

The decisions of the Customs office on the appeal are open to requests for a decision by the second instance within a time-limit of one month (Section 276, paragraph 1 of the Federal Law on Taxation).

Finally, decisions of the second instance are open to an appeal to the Supreme Administrative Court or to the Supreme Constitutional Court.

(b) All decisions - apart from the reasoning - must contain the necessary advice as to the appropriate instrument of appeal available, the time-limits and the competent authority where the appeal can be lodged (Section 93 of the Federal Law on Taxation).

10. (a) (i) All Laws and international agreements are published in the Austrian Federal Legal Gazette (the Agreement is published in the Legal Gazette No. 31/1981, the "Federal Law of 8 May 1980 on the Value of Goods for Customs Purposes" ("Customs Valuation Act 1980") in the Legal Gazette No. 221/1980).
- (ii) Regulations (decrees) in the legal sense are also published in the Austrian Federal Legal Gazette (the Decree of the Minister of Finance of 3 December 1980 on the forms for the written goods declaration and the declaration for the determination of the value for Customs purposes is published in the Legal Gazette No. 603/1980).
- (iii) These decisions and rulings are published in the "Collection of findings and rulings of the Supreme Constitutional Court and the Supreme Administrative Court" edited by the Austrian Federal Printing Office.
- (iv) The Austrian Federal Law on Taxation is published in the Austrian Federal Legal Gazette No. 194/1961.
- (b) At the moment, no further publication of rules is anticipated.
11. (a) Where the definite amount of customs duties and taxes is uncertain, the customs duties and taxes are assessed provisionally (Section 200 of the Federal Law on Taxation). The goods are released to the importer who may dispose of them unrestrictedly.
- (b) No.
12. (a) Vide 1. (a) (iii).
- (b) No.
13. The Customs Valuation Act includes the following provisions of the Interpretative Notes:
1. Interpretative Note to Article 2, item 4 and the corresponding Interpretative Note to Article 3, item 4 are included in Section 4, paragraph 2 and in Section 5, paragraph 2 respectively of the Customs Valuation Act.
 2. Interpretative Note to Article 5, items 1 and 7 are included in the national Interpretative Notes to Section 6 of the Customs Valuation Act.
 3. The substance of Interpretative Note to Article 7, item 2 is included in Section 8, paragraph 1 of the Customs Valuation Act.

4. Interpretative Note to Article 8, paragraph 1(c), second sentence, is included in Section 9, paragraph 1, item 4 of the Customs Valuation Act.
5. Interpretative Note to Article 15, paragraph 4 is included in Section 1, paragraph 5 of the Customs Valuation Act.

Generally, it is noted that those provisions of the Agreement and of the Interpretative Notes which according to the Austrian legislation principles are regarded as provisions of a strictly statutory character and suitable to be as such directly incorporated into law, were included in the Austrian Customs Valuation Act. The other provisions of the Agreement and the Interpretative Notes being likewise incorporated into national legislation (vide answer to 10 (a) (i)) are applied as a binding guideline for the interpretation of the provisions of the Customs Valuation Act.