

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

EUROPEAN ECONOMIC COMMUNITY

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 the European Economic Community is reproduced hereunder.

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

The provisions in the Agreement as to sales between related persons are incorporated in Article 1(2)(3) and (4) and Article 3(2) of Regulation (EEC) No 1224/80 and the Annex to Regulation (EEC) No 1494/80.

Additionally Article 1 of Regulation (EEC) No 1495/80 contains the following interpretation of the term "family": "... persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another :

- husband and wife,
- parent and child,
- brothers and sisters (whether by whole or half blood),
- grandparent and grandchild,
- uncle or aunt and nephew or niece,
- parent-in-law and son-in-law or daughter-in-law,
- brothers-in-law and sisters-in-law."

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

No.

(iii) What is the provision for giving the communication of the aforementioned grounds in writing if the importer so requests ?
(Article 1.2(a))

Article 1.2(a) of the Agreement is incorporated in Article 3(2)(a) of Regulation (EEC) No 1224/80.

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

The provision in question is incorporated in Article 3(2)(b) of Regulation (EEC) No 1224/80.

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

The Community considers that the problem of lost or damaged goods is part procedural and part valuation. As regards procedures, Part C of Regulation (EEC) No 1430/79 (Official Journal of the European Communities No L 175 of 12.7.1979, p. 1) permits the repayment of duty in the case of goods refused by the importer because they are defective or do not comply with the terms of the contract (e.g. goods damaged in transit). As regards the valuation problem, Article 4 of Regulation (EEC) No 1495/80 provides that

"Where goods declared for free circulation in the customs territory of the Community are part of a larger quantity of the same goods purchased in one transaction, the price actually paid or payable for the purposes of Article 3(1) of Regulation (EEC) No 1224/80 shall be that price represented by the proportion of the total price which the quantity so declared bears to the total quantity purchased."

In order to clarify the position of lost and damaged goods still further, the following sentence has been added to the above-mentioned Article 4 :

"Apportioning the price actually paid or payable shall also apply in the case of the loss of part of a consignment or when the goods being valued have been damaged before entry to free circulation."
(Article 1 of Regulation (EEC) No 1580/81)

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 ?

The provision in question is incorporated in Article 2(2) of Regulation (EEC) No 1224/80.

3. How has Article 5.2 been implemented ?

The provision in question is incorporated in Article 6(2) of Regulation (EEC) No 1224/80.

4. How has Article 6.2 been implemented ?

The provision in question is incorporated in Article 7(2) of Regulation (EEC) No 1224/80.

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

The provisions of Article 7.1 of the Agreement are incorporated in Article 2(3) of Regulation (EEC) No 1224/80.

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

The provisions of Article 7.3 of the Agreement are reflected in Article 12 of Regulation (EEC) No 1224/80 :

"1. Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of his imported goods was determined.

2. Requests for an explanation under paragraph 1 of this Article shall be introduced no later than one month after the date when the customs value is determined in accordance with this Regulation.

3. Where, under national procedures, the importer is provided with the explanation referred to in paragraph 1 without his having made a written request, the requirements of this Article shall be deemed to have been fulfilled."

Paragraph 2 was introduced for the sake of administrative convenience. Paragraph 3 was necessitated by technical legal requirements of the administrative systems in some Member States.

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

The prohibitions in question are incorporated in Article 2(4) of Regulation (EEC) No 1224/80.

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 ?

In the Community the following elements are to be included in transaction value :

- the cost of transport and insurance of the imported goods, and
- loading and handling charges associated with the transport of the imported goods

to the place of introduction of the goods into the customs territory of the Community.
(Article 8(1)(e) of Regulation (EEC) No 1224/80)

"Unloading" has been deleted for reasons of administrative simplification.

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

Rates of exchange reflecting the current value of each Member State currency in commercial transactions are published in each Member State. The rate of exchange to be used is determined by reference to the date when the customs authorities accept the declaration of entry to free circulation. The possibility of further harmonisation in the Community is under study.

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

Article 10 of the Agreement is incorporated in Article 10(2) of Regulation (EEC) No 1224/80, except that such information may also be communicated to the Commission of the European Communities. In the latter case, confidentiality is protected by Article 10(3) of Regulation (EEC) No 1224/80.

9. (a) and (b) What rights of appeal are open to the importer or any other person ?
How is he to be informed of his right to further appeal ?

Rights of appeal in matters of customs valuation are generally exercised in the Member States without reference to criminal law - i.e. these rights of appeal relate to the interpretation of the law, in separation from any question of fraud.

Further, Article 177 of the Treaty establishing the European Economic Community, provides the possibility of appeal to the European Court of Justice for a preliminary ruling.

A proposal has been made on the harmonisation in the Community of provisions laid down by law, regulation or administrative action concerning the right of appeal in respect of customs matters (Official Journal of the European Communities No C 33 of 14.2.1981, p. 2).

Meanwhile, the current situation in the Member States is summarised in the Annex hereto.

10. (a) (i) Provide information on the publication, as required by Article 12, of :
and (ii) the relevant national laws;
the regulations concerning the application of the Agreement;

The regulations constituting the relevant laws and regulations in the Community are published in the Official Journal of the European Communities, and have been integrally reproduced in document VAL/1/Add. 2 and its Addenda.

- (iii) the judicial decision and administrative rulings of application relating to the Agreement

No judicial decisions or administrative rulings have yet been made pursuant to implementation of the Agreement.

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

Regulation (EEC) No 1224/80 provides essentially that any references in other legislation to the previous basic regulation on customs valuation (Regulation (EEC) No 803/68) should be deemed to refer to Regulation (EEC) No 1224/80. Such legislation is all published in the Official Journal.

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

No new rules are currently anticipated.

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

The first sentence of Article 13 of the Agreement is incorporated in Article 11 of Regulation (EEC) No 1224/80.

- (b) Have additional explanations been laid down ?

No.

12. (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. Article 12 of Regulation (EEC) No 1224/80.

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

See answer to 5 (b).

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

The Interpretative Notes in question are incorporated collectively in Regulations (EEC) Nos 1224/80 and 1494/80.

ANNEX

Rights of appeal on customs valuation matters
in Member States of the European Economic Community

Germany - Abgabenordnung - AO 1977 of 16 March 1976 - BGBl. p. 613

1. Administrative procedure

"Einspruch" (protest) § 348 AO

The office which has issued the disputed decision also takes the decision on the protest. That office must completely re-examine the case. The decision on the protest must be made in writing, give reasons and include information about how appeal may be made to the "Finanzgericht" (fiscal court).

2. Judicial procedure

The first level of appeal is held before the "Finanzgericht" (§ 33 ff. Finanzgerichtsordnung). The "Finanzgericht" conducts enquiries about the facts and listens to evidence. The second level is held before the "Bundesfinanzhof". This Court only makes judgment on questions of law, but may refer the case back to the "Finanzgericht" for the facts to be re-established.

Belgium - Royal Decree of 5 February 1981 in replacement of Chapter XIII of the General Customs Law

1. Administrative procedure

If the declarant disagrees with the Customs officer's assessment of the customs value he may make application within 2 weeks to the Customs and excise inspector responsible for litigation about the value of goods.

Within 2 weeks of receipt of the letter of application, the inspector will make his ruling in writing to the declarant, together with his reasons.

2. Judicial procedure

Appeal or questions of legal interpretation may be made to the civil Court of Appeal geographically responsible for the customs office where the goods declaration was made.

Denmark - Danish Customs Law No 519 of 13 December 1972, as amended -
Article 116

1. Administrative procedure

The consignee of the goods can appeal to the Directorate-General for customs against a decision by a customs office (Article 116). Decisions taken by the Customs regarding customs valuation may be brought before the "Toldankenævnet" (customs board of appeal), a commission set up by the Minister of Taxation.

2. Judicial procedure

Rulings by the "Toldankenævnet" can be brought before an ordinary civil court.

France - Chapter XIII of the Customs Code (Articles 441-450);
Articles 35 bis et 104

1. Administrative procedure

In all cases where the customs value is the subject of dispute between the declarant and the Customs Service, the whole file related to the dispute is submitted for examination by the Directorate-General for Customs. If the dispute remains unresolved, the case is passed to the "Commission de Conciliation et d'Expertise Douanière" (C.C.E.D.) (Customs Conciliation and Appraisal Committee).

2. Procedure before the C.C.E.D.

The C.C.E.D. is composed of magistrates and assessors who are independent from the Administration. The procedure requires each side to put its own case, and the Committee's conclusions are notified to the parties.

3. Judicial procedure

The C.C.E.D.'s conclusions are not binding upon the parties (neither administration nor the person liable to make payment) who have the option of requesting a ruling on the law, from a judge. The procedure followed is as for civil law (first level - appeal - cassation). On the contrary, in case of breach of customs law the case is passed to the criminal courts.

Greece

1. Administrative procedure (Tax consolidation law - Article 10,
Decree of 27.5.1920)

The declarant has the right to dispute the customs value determined by the Customs service, before the Commission of customs disputes of first instance. He may further appeal to a Commission of second instance. These commissions comprise representatives of the Administration and of the Chamber of Commerce.

2. Judicial procedure (Code of fiscal procedure - Law No 4125/60)

The person concerned can appeal to the fiscal court against an act of the Customs authority based on a decision of the Commission of second instance. Subsequently he can appeal to the Court of Appeals and the Council of State (Articles 165 and 184).

ANNEX

It is also possible to refer appeals direct to the fiscal court, without following the administrative procedure.

3. Penalties

The declarant pays a fine when the declared value differs from the value as established by the Customs authority or by the decisions of the Commissions or Courts (Article 33 of Customs Code (Law No 1165/18)).

Ireland - Customs Consolidation Act, 1876

1. Administrative procedure

Appeal to the actual officer of Customs and Excise, his immediate superiors or the Revenue Commissioners is permitted. Final decision on any administrative appeal rests with the Board of the Revenue Commissioners.

2. Judicial procedure (Article 30 of 1876 Act)

The Customs Consolidation Act provides for a right of appeal to the judiciary. Furthermore a general right of appeal is available.

Italy - Presidential Decree No 43 of 23 January 1973 ("Testo Unico")

1. Administrative procedure

If a customs value is disputed, the trader may use the procedure of first instance, which is that the matter is referred to the head of the customs region, who seeks the opinion of the "Collegio consultivo compartimentale dei periti doganali" (regional advisory board of customs experts) and delivers his ruling. If he disputes this ruling, the trader has the option of proceeding to the second instance which is that the matter is referred to the Minister for Finance, who seeks the opinion of the "Collegio consultivo centrale dei periti doganale" (central advisory board of customs experts) and delivers his ruling.

2. Judicial procedure

If the trader does not accept the decision of the Minister for Finance, he can appeal to the civil judicial authority, which is comprised of the following elements: ordinary court, Court of Appeal, Court of Cassation.

Luxembourg - Grand-Ducal Decree of 1922 allows in the framework of "UEBL" the application of Belgian Decrees by publication in the Official Journal

The recent amendment to the Belgian Law has not yet entered into force in Luxembourg. The current situation is covered by the Law of 1896.

1. Administrative procedure

If the declarant disagrees with the Customs officer's assessment of customs value he may appeal to the Customs Directorate.

2. Judicial procedure

Further appeal may be made to the local civil court.

Netherlands - General Law of customs and excise
(Law of 26 January 1961, Stb 31)

1. Administrative procedure

Any person concerned can contest the Customs service's assessment of the customs value of goods. Such disputes are taken to the inspector who makes his ruling.

2. Judicial procedure ("bezwaar en beroep")

Appeals against the inspector's ruling may be made to the "Tariefcommissie" (Tariff Commission). The "Tariefcommissie" is a special judicial college. It has complete judicial powers. It has been accepted by the European Court of Justice as a judicial authority.

United Kingdom - Customs and Excise Management Act, 1979 - Section 127

1. Administrative procedure

The importer can contest any customs valuation decision taken by the Administration. Disputes which cannot be resolved locally are referred to the central administration.

2. Judicial procedure

Under Section 127 of the Customs and Excise Management Act, the importer has the right to have any dispute on customs valuation referred to the arbitration of a referee appointed by the Lord Chancellor.

Appeal to a higher judicial authority is possible on points of law.
