

TARIFFS AND TRADE

Special Distribution

Committee on Customs Valuation

Original: English

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Check-list of Issues

Addendum

BRAZIL

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 check-list of issues relating to national legislation on customs valuation. At its meeting of 13 December 1985, the Committee agreed that questions 14 and 15 to be added to the check-list.

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

1. Questions concerning Article 1

a) Sales between related persons

(I) Are sales between related persons subject to special provisions?

- No.

(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 afore-mentioned grounds in writing if the importer so requests?

- According to Decree n. 92.930 of 16 July, 1986, the Agreement on the Implementation of Article VII of the GATT is applied in Brazil in all its entirety, taking into account the reservations made under paragraphs 3, 4 and 5 of its Additional Protocol. Therefore, the relevant provision applicable in this case is that of Article 1.2(a) of the Agreement itself. Moreover, the Civil Servants Statute (Law n. 1711/52) provides that public civil servants must answer in writing to requests of interested parties within a certain period of time.

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

- In accordance with the relevant provisions of the Agreement, if there are doubts about the determination of the value, the Customs Administration gives the importer the opportunity to demonstrate that such value closely approximates to one of the values occurring at or about the same time, as set forth in the referred Article.

b) Price of lost or damaged goods

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

- No. The customs value must be determined in accordance with the provisions of the Agreement and by the application of the appropriate method.

2. How has the provision of Article 4 to allow the importer an option to reserve the order of application of Articles 5 and 6 been implemented?

- In the light of the reservations made by Brazil, the order of the application of Articles 5 and 6 must not be reversed.

3. How has Article 5.2 been implemented?

- Due to the reservations made by Brazil, Article 5.2 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests.

4. How has Article 6.2 been implemented?

- In accordance with the relevant provisions of the Agreement.

5. Questions concerning Article 7

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

- There is no special provision since the integral text of the Agreement has been incorporated to the domestic legislation.

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

- Same as above.

c) Are the prohibitions found in Article 7.2 delineated?

- Same as above.

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?

- Brazil provided for the inclusion in the customs value of all the elements specified in Article 8.2 of the Agreement.

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

- The rate of exchange for customs purposes is published each period of 15 days to be put into force in the period of 15 days immediately subsequent (Decree n. 91.030 of March 5th, 1985, Article 103, single paragraph).

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

- In Brazil, public servants and the Treasure Administration must, under legal provisions, abstain from supplying any information of their knowledge, under the responsibility of their own office, on the economic and financial situation of tax-payers and others, except for at judicial request (National Fiscal Code, Articles 198 and 199).

9. Questions concerning Article 11

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

- In Brazil, the right of appeal on fiscal matters may be exercised in two separate ways; administrative or judicial. The administrative way is ruled by Decree n. 70.235/72 and it comprises two instances. The judicial way falls under the Federal Justice and is administered by the Judiciary Power.

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

- The party concerned is informed of its right to further appeal by the decision taken at the first instance.

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

a) (I) the relevant national laws

- They are published in the Official Journal of the Union

(II) the regulations concerning the application of the Agreement

- Same as above

(III) the judicial decision and administrative rulings of general application relating to the Agreement

- Same as above

(IV) General or specific laws being referred to in the rules of implementation or application

- Same as above.

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

- No publication is anticipated.

11. Questions concerning Article 13

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

- The referred mechanism is provided for in Decree-law n.1455/76 (Article 39); Decree n. 91030/85 (Article 112, single paragraph), and "Portaria"(ministerial official document) 389/76.

b) Have additional explanation 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?

- See answer to question 1 (a) III above.

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

- No.

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

- They have been incorporated as well in all their entirety.

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?

- The implementation of the referred Decision is still being examined in Brazil.

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, how have the provisions of this paragraph been implemented?

- Same as above.