

**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**

Checklist of Issues

Addendum

Mexico

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. At its meeting of 13 December 1985, the Committee agreed that questions 14 and 15 be added to the checklist.

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

Attached are the replies of Mexico to the questionnaire on the implementation and administration of the Customs Valuation Code.

1. Questions concerning Article 1:

(a) Sales between related persons:

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

Article 52 of the Customs Law contains provisions for determining the transaction value in operations between related persons as set out in Article 1 and the interpretative note to Article 1 of the Agreement on Implementation of Article VII of the GATT, henceforth the "Agreement". There are no special provisions concerning sales between related persons.

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

In order to determine that a price has been influenced by the relationship, the authority must apply any of the mechanisms set out in Article 1 of the Agreement. In cases where the authority requires the importer to provide evidence to determine whether the declared value is acceptable or not, in the case of operations between related persons, the importer must show that the price was not influenced by the relationship, as provided for in the Agreement. It should be made clear that this verification procedure takes place after the importation.

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

It should be made clear that any verification procedure initiated by the customs authority must comply with the provisions of the Fiscal Code of the Federation, according to which a proceeding is always begun with a written notification and likewise is concluded with a written decision, giving the legal reasons and grounds, and provides the opportunity for the person concerned to submit evidence and make such representations as he is legally entitled to make.

This means that, the procedure to verify the value begins with a written notification from the authority, requesting the person concerned to provide the necessary documents and information, depending on the matter to be verified, and granting him a time-limit to reply. Once the request has been satisfied, or the time-limit has elapsed without the importer replying, the authority resolves the matter by a written decision giving grounds and reasons.

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

As indicated above, when the authority considers that the value of the transaction involving the imported goods does not closely approximate any of the test values to which the Agreement makes reference, it requires the importer to provide the necessary evidence to determine whether the relationship has influenced the price paid or payable for the goods, and thus, if the transaction value is acceptable. This procedure is subsequent to importation.

(b) Price of lost or damaged goods:

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

There are no special provisions or practical arrangements in this regard.

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?

Pursuant to the provisions of Articles 4 and 5 of the Protocol of the Agreement, the Mexican Government reserved the right to delay implementation of Article 4 of the Agreement for a period of three years from the date when the remaining provisions of the Agreement come into force in Mexico, so that, at the present time, this provision is not applicable.

3. How has Article 5.2 been implemented?

There have been no instances of determining the customs value of imported goods using this method, despite the fact that it is provided for in the Customs Law.

4. How has Article 6.2 been implemented?

With regard to the provisions of Articles 4 and 5 of the Protocol of Agreement, the Mexican Government reserved the right to delay implementation of Article 6 of the Agreement for a period of three years from the date when the remaining provisions of the Agreement come into force in Mexico, so that, at the present time, this provision is not applicable.

5. Questions concerning Article 7:

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

Article 55-E of the Customs Law allows the use of the valuation methods provided for in Articles 1 to 7 of the Agreement, with greater flexibility in conformity with reasonable criteria compatible with legal principles and provisions, on the basis of the data available in the national territory. There are no additional provisions.

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

Regardless of the method used, if the authority verifies the customs value declared by the importer, it must follow the established procedures, which allow the importer the opportunity to submit evidence and make such representations as he is legally entitled to make, and provide for decision-giving grounds and reasons to be issued at the end of the proceedings.

- (c) **Are the prohibitions founded in Article 7.2 delineated?**

The prohibitions contained in Article 7.2 are mandatory for the Mexican authorities, as set out in the Agreement.

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?**

Under the provisions of the Customs Law, the customs value includes transport, insurance and related costs such as loading, unloading and handling incurred in the carriage of the goods to the place of importation, with the exception of originating goods imported under a preferential tariff regime in accordance with the provisions of the North American Free Trade Agreement, in which case the above-mentioned items are included in the customs value up to the place of exportation.

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

The rate of exchange is published in the Diario Oficial de la Federación (Official Journal of the Federation).

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

Under the provisions of Article 69 of the Fiscal Code of the Federation, officials involved in the various procedures concerning application of tax provisions are required to preserve absolute confidentiality concerning statements and information supplied by taxpayers or third parties related to them, and likewise in respect of such information obtained in the exercise of their powers of verification. This confidentiality does not include cases when they must supply information to officials responsible for the administration or protection of federal fiscal interests, judicial authorities in criminal proceedings or courts dealing with maintenance (alimony) matters, mainly.

9. Questions concerning Article 11:

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

The cases and conditions under which appeals are possible are governed by the Fiscal Code of the Federation. The Appeals provided for in the Fiscal Code of the Federation lie against final decisions by the customs authority. The procedure of request for review must be exhausted before an appeal can be made to the Fiscal Tribunal of the Federation, in accordance with the provisions of the Customs Law.

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

- (a) (i) **The relevant national laws;**
- (ii) **The regulations concerning the implementation of the Agreement;**
- (iii) **The judicial decisions and administrative rulings of general application relating to the Agreement;**
- (iv) **General or specific laws referred to in the rules of implementation or application.**

There are no special regulations for determining the customs value of imported goods. The applicable provisions are found in Articles 48 to 55-E of the Customs Law, and there are some special provisions in the "Resolution Setting Out Criteria for Interpretation of Provisions Concerning the Customs Value of Goods", published in the Diario Oficial de la Federación (Official Journal of the Federation) of 29 June 1993 and the "Resolution Establishing General Fiscal Rules Concerning Foreign Trade", published in the Diario Oficial de la Federación on 28 March 1994, and amended through Decisions (Acuerdos) published in the same Official Journal on 6 May, 4 August and 17 October of this year. Both the Law and its amendments and additions are published in the Diario Oficial de la Federación once they have been approved by the Congress of the Union. Furthermore, it should be pointed out that all official public notices are given in the Diario Oficial de la Federación.

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

For the time being, the publication of further rules is not anticipated.

11. Questions concerning Article 13:

- (a) **How is the obligation of Article 13 (last sentence) being dealt with in the respective legislation?**
- (b) **Have additional explanations been laid down?**

As a general rule, it is not necessary to provide a surety in order to withdraw the goods from customs, nor is it necessary for the goods to remain in customs while it is verified whether the declared value was correctly determined, since the verification of the value is normally carried out subsequent to importation, after the goods have been released. Release of the goods requires fulfilment of the formalities for customs clearance, which includes presentation of the import declaration, with the relevant documents annexed, payment of duties payable by the importer. The goods are subject to the random inspection procedure.

However, in exceptional cases, even when the import duties assessed on the importer have been paid, a surety is required where the Ministry of Finance and Public Credit has determined an estimated price for goods and the value declared by the importer is lower than their published price. In such cases, the surety can be cancelled by submitting an application, which must be accompanied by the invoice in which the competent authorities of the supplier's country of residence certify that the invoice was actually issued by the supplier: the surety will then be cancelled, after 30 or 90 days from presentation of the invoice, if the authority has not notified the institution providing the surety of its intention to continue exercising its powers of verification with respect to the goods covered by the surety. There are options for provision of global sureties, as well as for not being subject to the obligation to present sureties.

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

As indicated above, any act by the authorities must, as a minimum, satisfy the requirements referred to in Article 38 of the Fiscal Code of the Federation. Under this Article, the following requirements, among others, must be fulfilled: the statement must be in writing, the issuing authority must be indicated, the grounds and reasons must be given, together with the decision, subject or purpose to which it refers, and it must bear the signature of the competent official and, as appropriate, the name or names of the persons to whom it is addressed.

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

Some of the provisions contained in the Interpretative Notes of the Agreement have been incorporated in the Customs Law. This is the case of the provisions concerning the price actually paid or payable, covered in the Note to Article 1 and included in Article 48 of the Customs Law. Likewise, the items not included in the customs value which are also referred to in the Note to Article 1 of the Agreement can be found in Article 50 of the Customs Law. Furthermore, Article 52-A of the same Law reflects the provisions of paragraph 2 of the same Interpretative Note.

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?**

There are no provisions governing interest.

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 (VAL/8), how have the provisions of this paragraph been implemented?**

Mexico does not apply paragraph 2 of that Decision.