

WORLD TRADE ORGANIZATION

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Committee on Customs Valuation

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT ON CUSTOMS VALUATION

Checklist of Issues

SWAZILAND

The following communication, dated 8 May 2001, has been received from the Permanent Mission of Swaziland.

The Permanent Mission of the Kingdom of Swaziland to the United Nations presents its compliments to the Director-General of the World Trade Organization (WTO) and has the honour to transmit herewith the Kingdom of Swaziland's requirements for customs valuation checklist.

Article 1: Sales between related persons

- Our national legislation prescribes that sales between related persons may be accepted for customs valuation purpose subject to the requirements of the WTO Agreement to the extent that the existing relationship does not influence the sale transactions.
- Intercompany prices are not prima facie considered as grounds for regarding the respective prices as influenced as long as the existing relationship between the companies does not affect the prices.
- Our Customs and Excise Act positively addresses the concerns raised under Article 2(a) of the WTO Agreement which prescribes that, if the Customs Administration has reasons to believe that the information submitted by the importer reflects that there has been a relationship existing between the buyer and seller that influenced the price actually paid or payable for the imported goods being valued and, that the basis for suspicion of such influence in the relationship shall be communicated to the importer in writing if the latter so request.
- Section 66(3) of our national legislation effectively addresses the requirements of Article 1.2(b) of the Agreement.

Price of lost or damages goods

Our national legislation does not expressly make provision or any practical arrangements for customs valuation in respect of the price of lost or damaged goods.

However, it is our considered opinion that section 74(bis) allows the Commissioner to use his discretion within the confines of the Agreement in determining a value for duty purposes.

Article 4

Our national legislation is compatible with Article 4 of the Agreement regarding a provision to allow the importer an option to reverse the order of application of Articles 5 and 6 thereof.

Article 6

Whilst our national legislation is silent regarding the invocation of Article 6.2 of the Agreement, should our Customs Administration encounter a situation that necessitates the invocation of this article, it shall not hesitate to do so as per the requirements of the Agreement.

Article 7

- Section 66(9) of our national legislation makes provision for Customs valuation of imported goods in accordance with Article 7 of the Agreement.
- Although our national legislation does not presently make provision for informing the importer about the Customs value of imported goods determined under Article 7 of the Agreement, if the importer so requests, our administration will have no objection providing such information.
- Section 66(9) of our Act also outlines the prohibitions prescribed in Article 7.2 of the Agreement.

Article 8

- Section 67 of our Customs and Excise Act sufficiently covers the considerations for addition to or deduction from the transaction value of imported goods to the extent that such additions or deductions are prescribed in the Agreement.
- In case of F.O.B. application for determination of a transaction value, our national legislation accept ex-factory prices to the extent that they are considered in the Agreement.

Article 9

Subject to section 73 of the Customs and Excise Act, Regulation 51 of our Customs and Excise Regulations, 1976 confirms the implementation of Article 9.1 of the Agreement.

Article 10

Section 4 of our Customs and Excise Act effectively addresses the concerns raised under Article 10 of the Agreement regarding confidentiality of any information acquired by this office for the purposes of Customs valuation except as otherwise provided for in the same section of the said legislation.

Article 11

Section 91(3) of our Customs and Excise Act prescribe the importer's right of appeal to the Minister for Finance against any decision or determination made by the Commissioner in exercise of his powers within the Act, provided that such right is exercised by the importer within a period of 3 months from the date of such determination or decision and, that the Minister's decision shall be final.

Article 12

- Laws, regulations, judicial decisions and administrative rulings of general application giving effect to the WTO Agreement are first published in our government gazette before being incorporated in our national legislation as legally binding instruments.
- Publication of further rules is anticipated by this administration in the event that amendments are also effected in the WTO Agreement.

Article 13

- Although it is not expressly stated in our national legislation that in the event that a final determination for Customs valuation of imported goods is delayed by this office, the goods may be released to the importer upon payment of a provisional amount or guarantee to cover duties and taxes that may be due.
- Departmental code instructions are also issued by the Commissioner detailing the conditions and procedures for implementation in respect of pre-released goods.

Article 16

- The provisions of section 66(9) of our Customs and Excise Act prescribe that where the Commissioner has determined the Customs value of imported goods on the basis of a

previous determination, a written explanation of such determination is given to the importer if he so request.

- Section 66(6) of the Customs and Excise Act also provides for a similar request regarding a Customs Valuation of imported goods.

Other questions

- Section 67 of our national legislation effectively addresses the concerns raised under the interpretative notes of the WTO Agreement.
 - Section 67(2) of our Customs Act complies with the requirements of the Tokyo Round Committee adopted on 26/04/84 pertaining the treatment of interest charges when determining the value for Customs Duty purposes.
 - Section 74(bis) of the Customs and Excise Act is directly or indirectly compatible with the requirements of paragraph 2 of the Tokyo Round Committee adopted on 24/09/84 regarding Customs valuation of carrier media bearing software for data processing equipment.
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