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Committee on Customs Valuation

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**NOTIFICATION UNDER ARTICLE 22 OF THE AGREEMENT ON IMPLEMENTATION  
OF ARTICLE VII OF THE GENERAL AGREEMENT  
ON TARIFFS AND TRADE 1994**

REPLIES FROM TONGA TO QUESTIONS FROM THE UNITED STATES  
REGARDING DOCUMENT G/VAL/N/1/TON/1<sup>1</sup>

TONGA

The following communication, dated 27 September 2023, is being circulated at the request of the delegation of Tonga.

**Question 1**

It appears that Article 20 of Tonga's Customs Act allows for the Minister to review a determination or other decision made by a Customs officer. What would prompt or provoke the Minister to undertake such a review? Does Tonga consider that Article 20 implements a provision of the WTO Customs Valuation Agreement (CVA)? If so, please identify the relevant provision.

**Response**

**Section 20 (1) of the Customs Act 2007 states that:**

*(a) At any time after the making of a determination or other decision by a Customs officer under this Part in relation to imported goods, the Minister may review the determination or other decision and may –*

- (i) affirm the determination or other decision;*
- (ii) vary the determination or other decision; or*
- (iii) revoke the determination or other decision and make any other determination or decision that is required to be made for the purpose of determining the customs value of the goods in accordance with this Part;*

*(b) "Where, by reason that the Minister, under paragraph (a), has varied or revoked a determination or other decision of a proper officer,–*

- (i) the amount of duty that was levied is less than the amount that should have been levied; or*
- (ii) the amount of duty that was refunded is greater than the amount that should have been refunded;*

*a letter of demand will be issued by the Minister for the payment of the amount of duty so short levied or so erroneously refunded, as the case may be."*

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<sup>1</sup> The previous document containing questions pertaining to the customs legislation of Tonga were issued in document G/VAL/W/373.

This provision provides an avenue for the Minister to reconsider a decision with reason to believe that the determinations were incorrectly applied and that the proper valuation is applied. Incident reporting, internal audit, staff identification and/or other identification methods would prompt for the Minister to review a determination or decision.

Customs cannot be required to depend on documentation which is incomplete in respect of relevant information or which contain errors which have the effect of distorting the relevant information.

Situations may arise when it becomes necessary to use the information contained in an incomplete document and to make further enquires so as to obtain information or facts missing from such a document. In addition, only a part of a document might contain errors and reliance might be placed on other parts of the document which do not have any such errors.

This is consistent with **Article 17 of the WTO Customs Valuation Agreement (CVA)** and the clarification written under **Annex III of the "Agreement" paragraph 6:**

*"The Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. Members, subject to their national laws and procedures, have the right to expect the full co-operation of importers in these enquiries."*

Furthermore, according to the **TCCV Texts; Advisory Opinions 19.1 – Application of Article 17 of the Agreement and paragraph 6 of Annex III:**

*"...the rights and obligations of importers and Customs in the determination of the Customs value would depend on national laws and regulations."*

Where Customs has reason to doubt the truth or accuracy of the particulars or of documents produced in support of the declaration, they may ask the importer to provide further explanation, including documents or other evidence. If after receiving the information or in the absence of a response, Customs still has reasonable doubts about the truth or accuracy of the declared value, it may be deemed that the Customs value of the imported goods cannot be determined under Section 12 of the Customs Act. When a final decision is made, Customs shall communicate to the importer in writing its decision and the grounds thereof.

### **Question 2**

Has Tonga made a reservation in accordance with paragraph 3 of CVA Annex III and CVA Article 21 to disallow requests by importers to reverse the order of application of the deductive and computed valuation methods provided for in Articles 15 and 16 respectively in the Customs Act?

### **Response**

We have not made such a reservation and are considering this matter in our current view of Tonga's Customs Act.

### **Question 3**

Please explain which provision of Tonga's Customs Act ensures that Tonga will not require or compel any person not resident in Tonga to produce for examination, or allow access to, any account or other record for the purposes of determining computed value, as provided in CVA Article 6.2.

### **Response**

The law as it stands does not require any person not resident in Tonga to produce for examination, or allow access to, any account or other record for the purposes of determining computed value, as referenced in CVA Article 6.2. Nevertheless, we have taken note of the question and will consider this matter in our current review of Tonga's Customs Act.

**Question 4**

Please explain which provision of the CVA is implemented by Article 12(2)(h) of Tonga's Customs Act.

**Response**

We have taken note of the question and will consider this matter, including whether to omit this provision, in our current review of Tonga's Customs Act.

**Question 5**

It appears that Article 15(2)(d) of Tonga's Customs Act indicates that in determining the customs value of the merchandise under the deductive value method, the Minister must be satisfied that the purchaser did not incur any costs related to the finance cost to purchase the imported goods referred to Article 12(2)(h). Please explain if Tonga considers that this Article implements a provision of the CVA, and identify that provision.

**Response**

We implement provision Article 5(1)(a)(iii) which states: where appropriate the deduction of costs and charges referred to in paragraph 2 of provision Article 8 of CVA. Therefore, we will consider a correction to Customs Act Section 15(2)(d) in our current review of Tonga's Customs Act.

**Question 6**

It appears that according to Article 15(4)(c) of Tonga's Customs Act, in order to apply Article 15(4), the transaction must first satisfy Article 15(4)(b). However, Article 15(2)(b) refers to goods which are sold in Tonga in the same condition in which they were imported. Please explain how this condition could be required since Article 15(4) appears to apply to deductive value of goods that are further processed upon importation.

**Response**

We have taken note of the apparent conflict in these provisions and will consider this matter in our current review of Tonga's Customs Act.

**Question 7**

What is the basis in the CVA for referring to Articles 12(2)(g) and 12(2)(h) in Article 16 of Tonga's Customs Act on computed value?

**Response**

**Section 16: Computed Value** of Tonga's Customs Act is intended to implement **provision Article 6** of the CVA.

In question 4 above we have addressed the matter pertaining to Section 12(2)(h); similarly, we have taken note of this question as it pertains to Section 12(2)(g) and will consider this matter, including to omit this reference, in our current review of Tonga's Customs Act.

**Question 8:**

Please explain which provision in Tonga's Customs Act provides for notice of a decision on appeal in writing, as provided under CVA Article 11.3?

**Response**

A general provision relating to appeals of customs determinations is contained in **Section 126: Appeal** under our **Customs Excise Management Act (CEMA)** which states:

*"Any person may appeal to Tax Tribunal within 30 days of receipt of a decision of the Minister under Customs laws."*

We have taken note of this question as it pertains to CVA Article 11.3 and will consider this in our current review of Tonga's Customs Act.

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