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Committee on Customs Valuation

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

**QUESTIONS FROM THE UNITED STATES TO BRAZIL
REGARDING DOCUMENT G/VAL/N/1/BRA/4**

BRAZIL

The following communication, dated 30 October 2023, is being circulated at the request of the delegation of the United States.

The United States thanks Brazil for notifying the publication of the Normative Instruction RFB Nº 2.090, of 22 June 2022 in document G/VAL/N/1/BRA/4.

Question 1

In Article 2(VII), "value ratified" is defined as "the customs value of a particular good, regularly calculated by a Fiscal Auditor of the Federal Revenue of Brazil, or expressly accepted by it ... ". The concept of "ratified value" is referred to in the provisions on test values and transaction value of identical or similar goods.

- Please explain what it means to "expressly accept" the value for these purposes.
- Does this mean that in order to be used for purposes of test values, transaction value of identical goods, or transaction value of similar goods, the previously accepted customs value must have actually been validated by the customs authority, rather than merely accepted by it?

Question 2

Regarding Article 4(IV), Section 1, please clarify whether a relationship between the buyer and the seller is *prima facie* evidence that the relationship influenced the price.

Question 3

Article 4(IV), Section 3 provides that the transaction value in a related-party transaction may be accepted if it is "very close" to certain test values occurring at or about the same time. Could Brazil please confirm that "very close" is equivalent to the "closely approximates" standard as provided in Article 1.2(b) of the WTO Customs Valuation Agreement (CVA)?

Question 4

Has Article 9 of the CVA been implemented in Brazil? If so, please identify the relevant provisions of Brazilian law, specify where the rate of exchange is published, and specify whether the rate is applied as of the date of exportation or importation.

Question 5

Article 5, Section 1(I) provides that the price actually paid or payable includes "commercialization of the imported goods, such as advertising, warranty and sales promotion, paid by the buyer to the seller or for the benefit of the seller so as to satisfy a part of the payment for the imported goods, and as a condition of sale of that good ...".

Please explain how this provision is consistent with the CVA, in particular, paragraph 2 of the Interpretative Note to Article 1, paragraph 1(b) section 2 ("... Likewise, if the buyer undertakes on the buyer's own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.").

Question 6

Article 5, Section 1(II) provides that the price actually paid or payable includes "the supply of materials or provisions or services to a third party, by the buyer, for the benefit of the seller, as a condition of sale of the imported good."

Could Brazil please confirm whether this provision is intended to address "indirect payments" as provided for in paragraph 1 of the Interpretative Note to Article 1 ("... Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.").

Question 7

Article 5, Section 2 provides that "[f]or purposes of calculation of the customs value based on the transaction value method, the discount related to previous transactions shall be considered as part of the price actually paid for the valued goods to which this discount has been granted, regardless if the discount is distinguished in the commercial invoice".

- Could Brazil please explain whether this provision prevents legitimate quantity discounts from being considered in determining the customs value of goods?

Question 8

Please clarify the meaning and intended application of Article 9, Section 1(II), which provides that "[t]he elements referred to in the head of this article shall be included in the customs value based on the costs actually incurred, including in cases of ... goods that enter the country via their own ways".

Question 9

Article 12 provides for situations in which the customs authority may decide whether to apply the transaction value method. Could Brazil please identify the provisions implementing Article 1.1 of the CVA (e.g., restrictions on disposition or use of the goods, condition or consideration for which a value cannot be determined, etc.)?

Question 10

Regarding Article 12, does Brazil inform the importer of its doubts (in writing if requested), give the importer an opportunity to respond, and inform the importer in writing of the final decision?

Question 11

Article 16(I) on the deductive value method provides that "resale at a unit price higher than the estimated value, the payment of the difference in taxes shall be required, with the respective fines and interests."

Could Brazil please clarify what fines and interest would apply in such cases (e.g., when the reseller in Brazil is able to sell the goods at a price that is higher than expected and subsequently adjusts the customs value upward)?

Question 12

Section II generally provides for the alternate valuation methods. Could Brazil please explain whether all the technical requirements for Articles 2, 3, 5, 6, and 7 of the CVA have been implemented domestically? For example, are the prohibited bases of valuation in Article 7 of the Customs Valuation (selling price in the country of importation, system which provides for the acceptance for customs purposes of the higher of two alternate values, etc.) incorporated in Brazil's law?

Question 13

Please confirm whether Brazil has adopted all definitions set forth in Article 15 of the CVA.

Question 14

Could Brazil please provide information on the publication of laws, regulations, judicial decisions, and administrative rulings of general application, as required under Article 12 of the CVA?

Question 15

Please identify the provision implementing Article 16, which provides the importer with the right to an explanation in writing as to how the customs value was determined.

Question 16

Article 19, Section 1, provides that "[t]he estimated values shall be rectified by the importer, within 90 (ninety) days, unless the importer proves that the implementation of the factors referred to in the head of this article will take place in a longer period than that declared at the time of import declaration."

- Could Brazil please clarify whether there is any limitation on the extension of the 90-day timeframe?

Question 17

Article 28 provides that "[t]he doubts of the customs authority may be based on, besides other elements, the incompatibility of the declared price with ...".

- Could Brazil please confirm that the list of elements in Article 28 I-VI are elements of the customs authority's risk assessment and justifications for seeking further information from the importer, rather than reasons to reject the declared price?

Question 18

Article 29 states that "[i]n the calculation of the customs value, the following international acts shall also be observed" and includes a list of the instruments issued by the WCO Technical Committee on Customs Valuation.

- Could Brazil please explain whether these instruments constitute binding legal precedent in Brazil?
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