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Committee on Customs Valuation

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**INFORMATION ON IMPLEMENTATION AND ADMINISTRATION
OF THE AGREEMENT ON CUSTOMS VALUATION**

CHECK-LIST OF ISSUES

NAMIBIA

The following submission, dated 8 December 2020, is being circulated at the request of the delegation of Namibia.

1. Questions concerning Article 1:

(a) Sales between related persons:

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

Provisions for dealing with sales between related persons in the context of the transaction value method are found in Section 76(1), (2), (3) of the Customs and Excise Act 20 of 1998 as amended.

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

No. the fact that the buyer and seller are related within the meaning of Section 76 (2) (a) is not in itself grounds for regarding the transaction value as unacceptable. Section 76 (3) of the Act provides that the transaction value may be used if the person clearing the goods proves that the relationship between the seller and buyer did not influence the price paid or payable for the goods.

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

Provisions for giving the grounds for considering that the relationship has influenced the price shall be communicated in writing if the importer so requests and is stipulated under the transaction value method in Section 76(3) of the Customs and Excise Act 20 of 1998 as amended.

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

The importer has to demonstrate that such values are closely approximated to one occurring at or about the same time or on request to use Method 5 (deductive) and Method 6 (computed). These provisions are provided under Section 76(3), (7) and (8) of the Customs and Excise Act 20 of 1998 as amended.

(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 concerning the valuation of lost or damaged goods. Section 2 (6) of the Act prescribes that the Commissioner shall institute and maintain formal consultative relationships with the Trade in order to increase co-operation and to facilitate participation in establishing the most effective methods of working which are commensurate with national laws and international laws which apply to Namibia and international agreements which are binding on Namibia.

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?

Section 76(5)(b) of the Act allows to reverse the order of application of Article 5 and 6 by an application to the Commissioner in writing by the importer.

3. How has Article 5.2 been implemented?

Article 5.2 is provided for in Section 76(7)(c).

4. How has Article 6.2 been implemented?

The entire Agreement has been given legal status in Section 76 of the Act. Specific provision of this Article was not regarded necessary as it is accepted in Namibian law that the customs authorities in Namibia have no extra territorial jurisdiction over an exporter in a foreign country.

5. Questions concerning Article 7:**(a) What provisions have been made for making value determinations pursuant to Article 7?**

Section 76(9) provides for value determination pursuant to Article 7.

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

The Directorate of Customs and Excise uses the provision as provided for in Article 16 of the of Customs Valuation Agreement which states "Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of the importer's goods was determined."

The importer is accorded the right to be heard and an explanation in writing as to how the Customs value was determined is communicated to the Importer. This step happens after the importer has been given ample opportunity normally 14 days to dispel doubt on customs value of goods under dispute and or under question."

(c) Are the prohibitions found in Article 7.2 delineated?

Yes, under Section 76(9) (a)-(g).

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?

Namibia uses an FOB system of customs valuation. Section 76 of the Act reflects this position. In those transactions in which the transaction is based solely on ex-factory prices, such prices are accepted as the basis for transaction value.

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

Section 81 provides that the Minister may prescribe the date on and the time at which the price paid or payable in respect of imported goods shall, if expressed in foreign currency, be converted into the currency of Namibia.

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

The requirement of confidentiality is prescribed in Section 4A of the Act

9. Questions concerning Article 11:**(a) What rights of appeal are open to the importer or any other person?**

Sections 44(5), 51(8), 67(5), 75(4), (5), (6), 78(3), (5), (6), 79(1) and 101(2) of the Act provides for various ways of appeals

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

No specific provision of the Act provides for an individual to be informed of his right to further appeal but the provisions at Question 9(a) provides for appeals and how an individual can go about to appeal.

10. Provide information on the publication, as required by Article 12, of:**(a) (i) The relevant national laws;**

Relevant national laws are published in the Government Gazette. It is used by government as the official way of communicating to the public.

(ii) The regulations concerning the application of the Agreement:

No customs valuation regulations have been made and none are contemplated at this stage. However, if rules are made it is published in the Government Gazette.

(iii) The judicial decision and administrative rulings of general application relating to the Agreement:

Judicial decisions are published in the Namibian Law Reports.

(iv) general or specific laws being referred to in the rules of implementation or application

See answers to 10(a)(i) and 10(a)(ii) above.

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

No further rules are anticipated at this stage. Administrative material will be Issued as the need arises.

11. Questions concerning Article 13:**(a) How is the obligation of Article 13 (last sentence) being dealt with in the respective legislation?**

Sections 17(1), 18(5), 21(1), 41(2), 64(3), 68(1), 110(3) makes provision for security to be provided.

(b) Have additional explanations 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?

Section 75(4) provides for that.

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

No.

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

General Interpretative Notes has been embedded into Valuation training manual and in standard operating procedures and most of the notes to Articles of WTO Valuation Agreement is covered under the provisions of the Section 76 and 77 of the Customs and Excise Act 20 of 1998 as amended.

14. How have the provisions of the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods been implemented?

See Section 77(2)(b)(vi).

15. For those countries applying paragraph 2 of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, how have the provisions of this paragraph been implemented?

Namibia did not yet implement paragraph 2 of the decision of 24 September 1984 on the valuation of Carrier Media Bearing Software for data processing equipment.
