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Page: 1/5

Committee on Customs Valuation

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

CHECK-LIST OF ISSUES

EL SALVADOR

The following communication, dated 6 September 2021, is being circulated at the request of the delegation of El Salvador.

1. Questions concerning Article 1:**(a) Sales between related persons:****(i) Are sales between related persons subject to special provisions?**

There are currently no special provisions in El Salvador for all the cases of sales between related persons set out in Article 15.4 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as WTO Customs Valuation).

In this regard, Article 201 of the Implementing Regulations for the Central American Uniform Customs Code (hereinafter the RECAUCA) only provides that, for the purposes of Article 15(4)(h) of the Agreement, persons will be deemed to be "of the same family" when they are spouses or relatives within the fourth degree of consanguinity or second degree of affinity.

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

No. In the event that the customs authority has reason to doubt the truth or accuracy of the data provided on the declared value, under the provisions of Article 204 of the RECAUCA it may request the importer to provide further explanations, together with documentation or other proof to show that the value declared corresponds to the total amount actually paid or payable for the goods imported, taking into account the provisions of Article 8 of the WTO Agreement on Customs Valuation.

In addition, Article 205 of the RECAUCA sets out the administrative procedure to be followed by the customs authority should there be any doubt as to the truth and accuracy of the data or documents provided by the importer.

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

Pursuant to the provisions of Article 205 of the RECAUCA, under the administrative procedure, the customs authority informs the importer in writing of the reasons for doubting the truth and accuracy of the data or documents provided. It does so in two

stages, first at the beginning of the procedure and then before adopting a final decision. This is to enable the importer to provide any exculpatory arguments and evidence they may deem to be relevant. The customs authority grants importers a period of 10 working days from the date of notification by the customs authority to provide their arguments and evidence.

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

In the case of sales between related persons, the importer must demonstrate compliance with the provisions of Article 1.2(b) of the WTO Agreement on Customs Valuation. In the event the customs authority has reason to doubt the truth or accuracy of the data provided, it implements the provisions of Articles 204 and 205 of the RECAUCA.

(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 currently no special provisions in El Salvador concerning the valuation of lost or damaged goods.

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?

Articles 195 and 196 of the RECAUCA address the provisions of Article 4 of the WTO Agreement on Customs Valuation, indicating that the importer must submit the request to the customs authority concerned in writing or by the means stipulated by the Customs Service, stating the reasons for requesting the reverse application of the valuation methods, within the 10 days following the date on which the customs authority gives notification of its intention to apply Article 5 of the Agreement for the customs valuation of the goods.

3. How has Article 5.2 been implemented?

There are currently no special provisions in El Salvador concerning this issue.

4. How has Article 6.2 been implemented?

There are currently no special provisions in El Salvador concerning this issue.

5. Questions concerning Article 7:

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

There are currently no special provisions in El Salvador concerning this issue. It should also be noted that, in accordance with paragraph 2 of the Note to Article 7 of the Agreement, the valuation methods laid down in Articles 1 to 6 inclusive are used with reasonable flexibility.

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

Pursuant to Article 16 of the WTO Agreement on Customs Valuation, and in accordance with Article 207 of the RECAUCA, the importer may request, within the three days following the date of notification of the customs value determined by the customs authority, an explanation regarding the method used as the basis for determining the customs value of the importer's goods. The customs authority must respond within the 10 days following the date of receipt of the request.

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

There are currently no special provisions in El Salvador concerning this issue.

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?

Pursuant to the provisions of Article 188 of the RECAUCA and Article 2(6) of the Law streamlining customs procedures, the customs value is made up of the value of the goods (transaction value) plus the additional elements listed in Article 8 of the WTO Agreement on Customs Valuation, regardless of the agreements, rights and obligations of the buyer and seller that determine how the costs and risks are allocated between the parties, which have been agreed upon in the sale of the goods.

At the national level, therefore, the cost of transport of the imported goods to the port or place of importation, the loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation, and the cost of insurance, are included in the customs value of the goods. The foregoing applies whether or not an Incoterm f.o.b. or ex-factory has been agreed.

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

In El Salvador's case, the authority with responsibility for publishing the exchange rate is the Central Reserve Bank of El Salvador (BCR).

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

Pursuant to the provisions of Article 167 of the RECAUCA, IT systems must ensure the privacy, confidentiality, non repudiability and integrity of data and documents that are transmitted and stored, as well as the authenticity of the entity issuing them and of users of the Customs Service's IT systems.

In addition, Article 30 of the Organic Law of the General Directorate of Customs of El Salvador stipulates that it is a specific obligation of officials and employees in performing their duties to maintain confidentiality. In other words, they must adequately safeguard the information or documents that are entrusted to them in the line of duty. Likewise, they may not use or disclose such information for uses unrelated to their work or to obtain advantages of any nature or economic benefit for themselves or any member of their family group or for any other person, company or entity.

9. Questions concerning Article 11:

(a) What rights of appeal are open to the importer or any other person?

The administrative appeals to which the importer has a right in order to challenge the decisions issued by the customs authority or the higher authority of the Customs Service are the remedies of review and appeal, which are regulated by Article 127 of the Central American Uniform Customs Code (CAUCA), Articles 623 to 625 of the RECAUCA, and Articles 49 and 51 of the Special Law on penalties for customs offences.

In accordance with the above-mentioned provisions, in the event of an appeal, the provisions of the Law on the organization and functioning of the Internal Revenue Appeals Court also apply.

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

The importer's right to file an appeal in respect of decisions issued by the customs authority or the higher authority of the Customs Service are regulated by Article 127 of the CAUCA, Articles 623 to 625 of the RECAUCA, Articles 45 to 51 of the Special Law on penalties for customs offences, as well as the provisions of the Law on the organization and functioning of the Internal Revenue Appeals Court.

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

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

The Directorate General of Customs of El Salvador publishes all information related to customs regulations and administrative provisions of general application on its website: <https://sitio.aduana.qob.sv/marco-legal/>.

El Salvador publishes all laws, regulations and executive decisions in the Official Journal, which can be consulted at: <https://imprentanacional.qob.sv/>.

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

No.

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

Pursuant to Articles 202 and 203 of the RECAUCA, if in the course of determining the customs value of imported goods it is necessary to delay the final determination of that value, the importer may request the release or clearance of the goods from customs if, where so required by the Customs Service, the importer posts a security sufficient to cover the amount of taxes for which the goods may be ultimately liable.

The guarantee may take the form of a deposit, surety or any other means specified by the Customs Service covering the difference in relation to the amount of import taxes to which the goods may ultimately be subject.

(b) Have additional explanations been laid down?

There are currently no special provisions in El Salvador concerning this issue.

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?**

Pursuant to Article 207 of the RECAUCA, the importer may request, within the three days following the date of notification of the customs value determined by the customs authority, an explanation regarding the method used as the basis for determining the customs value of the importer's goods.

The customs authority must respond within 10 days following the date of receipt of the importer's request.

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

No, there are no further regulations in El Salvador concerning an above-mentioned request.

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

In accordance with Article 14 of the Agreement, which states: "The notes at Annex I to this Agreement are an integral part of it and the Articles of the Agreement must be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement".

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

Pursuant to Article 190 of the RECAUCA, charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods will not be included in the customs value, provided that the circumstances set out in that Article exist.

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?

In determining the customs value of carrier media bearing software, only the cost or value of the carrier medium itself will be taken into account. The customs value will not, therefore, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium in the respective invoice, in accordance with paragraph 2 of the WTO's Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment.
