



VIII CONSTITUTIONAL GOVERNMENT

Decree-law n.º ... /2022

of ... of

**First amendment to the Customs Code,
approved by Decree-Law No. 14/2017, of 5 April**

Preamble

Timor-Leste is currently preparing to join the World Trade Organization, whose process is already at an advanced stage, and is expected to be completed by the end of 2022.

Within the scope of the aforementioned accession process, there are certain conditions that the country must comply with, in order to align its legislation with the common legal framework that governs that organization and its members.

Some of these conditions will have to be fulfilled over a more or less extended time horizon, during which the national legislation will temporarily remain in force.

However, there are certain legal changes which, due to their structural nature for the World Trade Organization and its members, were qualified by them as conditions precedent for accession.

Among these conditions, which therefore must be formalized prior to Timor-Leste's accession to the World Trade Organization, is the alignment of national legislation on customs matters with the agreement on the application of Article VII of the General Agreement on Tariffs and 1994 (General Agreement on Tariffs and Trade 1994), also commonly referred to as the Customs Valuation Agreement.

The national legislation on customs matters currently in force is consolidated in the Customs Code, approved by Decree-Law No. 14/2017, of 5 April.

In the wording of that code, the international commitments to which Timor-Leste was bound were already considered, namely those resulting from membership of the World Customs Organization, of which Timor-Leste has been a member since 19 September 2003.

Anticipating Timor-Leste's intention to join the World Trade Organization, the Customs Code also implemented the legal framework governing the aforementioned organization and its members, including the aforementioned Agreement on Customs Valuation.

In fact, articles 97 and following of the Customs Code, and the respective table 1, already provide for the transactional value as the main method of determining the customs value, subject or not to adjustments, and without prejudice to the application of subsidiary and of the residual method provided for in that agreement.

However, some of the members of the working group that assesses Timor-Leste's candidacy to the World Trade Organization detected specific situations in which national customs assessment standards do not perfectly reflect the content of the agreement in question.

In fact, table 1 of the Customs Code transposes certain provisions of the Agreement on Customs Valuation in a more simplified form, and in a different order. However, in this simplification exercise, some provisions were not fully or expressly transposed into the domestic legal system.

In particular, the following are at issue: i) the transposition of subparagraph a) of paragraph 2 of article 1 of the aforementioned agreement, under which the fact that the exporter and the importer are related parties shall not, in itself, constitute, a ground for disregarding the transaction value as a general rule for determining the customs value of goods; and ii) the transposition of subparagraph c) of paragraph 2 of article 1, under which the determination of the customs value of identical or similar goods serves only as a comparative term to determine whether the transaction value between related parties is or unacceptable and cannot be automatically used as a replacement customs value.

On the other hand, table 1 of the Customs Code reorganized and merged several provisions of the Agreement on Customs Valuation, which makes it difficult to apply the interpretative notes contained in the respective annex I, which not only were not accepted in the legal system of Timor-Leste, but also are drafted with reference to provisions that do not correspond in the aforementioned table 1.

With this amendment, therefore, the aim is to amend the Customs Code, limiting such amendment to the aforementioned table 1, in order to ensure that it accurately reflects the content of the Agreement on Customs Valuation, including the respective Annex I, which it forms an integral part.

This complies with the aforementioned condition precedent for access to the World Trade Organization, and with article 22 of the Agreement on Customs Valuation, under which each member of the organization shall ensure compliance with its laws and regulations, as well as the respective domestic administrative procedures, with the provisions of the agreement in question.

On the other hand, it guarantees easier comparability of national legislation with the legal framework that governs the World Trade Organization, ensuring that exports to Timor-Leste are treated in a transparent, non-discriminatory manner consistent with the approach adopted in other countries. members of that organization.

Thus, the Government decrees, under the terms of subparagraph o) of paragraph 1 of article 115 and subparagraph d) of article 116 of the Constitution of the Republic, to have the following effect as law:

Article 1

Object

This diploma makes the first amendment to the Customs Code, approved by Decree-Law No. 14/2017, of 5 April.

Article 2

Amendment

Table 1 annexed to the Customs Code, approved by Decree-Law no.

Article 3

Implementation

This diploma enters into force on January 1, 2023.

Approved by the Council of Ministers, on ... of 2022.

The Prime Minister,

Taur Matan Ruak

The Minister of Finance,

Rui Augusto Gomes

Enacted on ... of 2022.

Promulgated by

The President of the Republic,

José Ramos-Horta

Annex I

(to which article 2 refers)

«TABLE 1

(to which article 98 refers)

CUSTOMS VALUE OF IMPORTED GOODS

Interpretation, application and definitions

The provisions of this table must be read and applied in accordance with the instruments that are internationally binding on the State of Timor-Leste, namely the interpretative notes contained in Annex I of the agreement on the application of Article VII of the General Agreement on Customs Tariffs and Trade in 1994 (General Agreement on Tariffs and Trade 1994), which are an integral part of it.

(1) In this table:

- (a) The term "customs value of imported goods" means the value of goods determined with a view to the collection of ad valorem customs duties on imported goods; and,
- (b) The term 'produced' also means cultivated, manufactured or extracted.

(2) In this table:

- (a) The term "identical goods" means goods that are the same in all respects, including physical characteristics, quality and commercial prestige. Small differences in appearance do not preclude goods that otherwise comply with the definition from being considered identical;
- (b) The term 'similar goods' means goods which, without being the same in all respects, have similar characteristics and are composed of similar materials, enabling them to fulfill the same functions and to be commercially interchangeable. The quality of the goods, the commercial prestige and the existence of a trade mark are elements to be taken into account when determining whether the goods are similar;
- (c) The terms "identical goods" and "similar goods" do not apply to goods that incorporate or contain, as the case may be, engineering, study, art or design works, or plans and sketches, for which no any adjustment has been made pursuant to point (1)(b)(iv.) of section 8 of this table, as such works were carried out in Timor-Leste;
- (d) Only goods that have been produced in the same country as the goods to be valued will be considered as "identical goods" or "similar goods";

(e) Goods produced by a different person will only be taken into account when there are no identical goods or similar goods, as the case may be, produced by the same person who produced the goods to be valued.

(3) In this table, the term "goods of the same nature or of the same kind" means goods classified in a group or range of goods produced by a specific branch of production or by a specific sector of a branch of production, and includes identical or similar goods.

(4) For the purposes of this table, persons will only be considered related:

- (a) If one is on the management or board of directors of the other's company and vice versa;
- (b) If they legally have the status of partners;
- (c) If one is the employer of the other;
- (d) If one owns, controls or holds directly or indirectly 5% or more of the shares or securities issued with voting rights in both;
- (e) If one of them controls the other directly or indirectly;
- (f) If both are directly or indirectly controlled by a third person;
- (g) If, together, they directly or indirectly control a third person; or,
- (h) If they are members of the same family.

(5) Persons who are associated in business among themselves by virtue of the fact that one is the agent, distributor or exclusive dealer of the other, irrespective of the name used, will be considered related for the purposes of this table if they satisfy one of the criteria set out in point (4).

Section 1

Transaction value as primary basis of valuation

(1) The customs value of imported goods is the transactional value, that is, the price actually paid or payable for the goods when they are sold for export to Timor-Leste, adjusted in accordance with the provisions of section 8, provided that :

- (a) There are no restrictions on the transfer or use of the goods by the buyer, other than restrictions that:
 - i. Are imposed or required by law or the authorities of Timor-Leste;
 - ii. They limit the geographical area in which the goods can be resold; or,
 - iii. They do not substantially affect the value of the goods;
- (b) The sale or price is not subject to conditions or services whose value cannot be determined in relation to the goods to be valued;

(c) No part of the proceeds of any resale, assignment or further use of the goods by the buyer accrues directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of section 8; and,

(d) The buyer and seller are not related or, if they are, the transaction value is acceptable for customs purposes under the provisions of point (2).

(2) (a) In determining whether the transaction value is acceptable for the purposes of applying point (1), the fact that the buyer and seller are related within the meaning of the proem in this table is not, in itself, sufficient reason to deem the transactional value unacceptable. In such a case, the specific circumstances of the sale will be examined and the transaction value will be accepted provided that this alliance has not influenced the price. If, taking into account information provided by the importer or obtained from other sources, the customs administration has reason to believe that the alliance has influenced the price, it will communicate its reasons to the importer and give him a reasonable opportunity to respond. If the importer so requests, the reasons will be communicated in writing.

(b) In a sale between related persons, the transaction value will be accepted and the goods will be valued in accordance with the provisions of point (1) when the importer demonstrates that the said value is very close to one of the values indicated below, in the same moment or at a very approximate moment:

- i. Transactional value on sales to unrelated buyers of identical or similar goods for export to Timor-Leste;
- ii. Customs value of identical or similar goods, as determined pursuant to the provisions of section 5;
- iii. Customs value of identical or similar goods, as determined pursuant to the provisions of section 6;

In the application of the foregoing criteria, due account shall be taken of any differences shown between commercial levels, quantities, the elements listed in section 8 and the costs borne by the seller in sales in which he and the buyer are not related, and which the seller does not support sales in which he and the buyer are related.

(c) The criteria set out in point (2)(b) are intended to be used on the importer's initiative and for comparison purposes only. Pursuant to point (2)(b), substitution values cannot be established.

Section 2

Transaction value of identical goods as customs value

- (1) (a) If the customs value of imported goods cannot be determined by application of the provisions of section 1, the customs value shall be the transactional value of identical goods sold for export to Timor-Leste and exported at the same time that the goods to be valued or at a very close time;
- (b) When applying this section, the customs value will be determined using the transactional value of identical goods, sold at the same commercial level and in substantially the same quantity as the goods to be valued. In the absence of such sales, recourse will be had to the transactional value of identical goods, sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to the commercial level and/or quantity, provided that such adjustments, irrespective of whether they imply an increase or a decrease in value, are made on the basis of evidence that clearly demonstrates that they are reasonable and accurate.
- (2) When the costs and expenses referred to in point (2) of section 8 are included in the transaction value, this value will be adjusted to take into account appreciable differences in those costs and expenses between the imported goods and the considered identical goods, resulting from differences in distances and modes of transport.
- (3) If, when applying this section, more than one transaction value of similar goods is determined, the lower transaction value will be used to determine the customs value of the imported goods.

Section 3

Transaction value of similar goods as customs value

- (1) (a) If the customs value of imported goods cannot be determined by application of the provisions of sections 1 and 2, the customs value shall be the transactional value of similar goods sold for export to Timor-Leste and exported in at the same time as the goods to be valued or at a very close time;
- (b) When applying this section, the customs value will be determined using the transactional value of similar goods, sold at the same commercial level and in substantially the same quantity as the goods to be valued. In the absence of such sales, recourse will be had to the transactional value of similar goods, sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to the commercial level and/or quantity, provided that such adjustments, irrespective of whether they imply an increase or a decrease in value, are made on the basis of evidence that clearly demonstrates that they are reasonable and accurate.
- (2) When the costs and expenses referred to in point (2) of section 8 are included in the transaction value, this value will be adjusted to take into account appreciable differences in those costs and expenses between the imported goods and the similar goods considered, resulting from differences in distances and modes of transport.
- (3) If, when applying this section, more than one transaction value of similar goods is determined, the lower transaction value will be used to determine the customs value of the imported goods.

Section 4

subsidiary methods

If the customs value of imported goods cannot be determined by application of the provisions of sections 1, 2 and 3 of this table, it shall be determined by application of the provisions of section 5 or, where the customs value cannot be determined by application of that section, by application of the provisions of section 6; however, with the written authorization of the authorities of Timor-Leste, at the request of the importer, the order of application of sections 5 and 6 may be reversed.

Section 5

Deductible value as customs value

(1) (a) If imported goods or identical or similar imported goods are sold in Timor-Leste in the same state in which they were imported, the customs value of the imported goods, determined pursuant to the provisions of this section, shall be based on the unit selling price of the imported goods, or of identical or similar imported goods, totaling the highest quantity, provided they are made to persons not related to the sellers, at the time or very close to the importation of the goods to be valued, under reserve the following deductions:

- i. Commissions generally paid or agreed, or margins generally charged for profits and general expenses relating to the sales, in Timor-Leste, of imported goods of the same nature or of the same kind;
- ii. Usual transport and insurance expenses, as well as related expenses incurred in Timor-Leste;
- iii. Where applicable, other costs and expenses listed in point (2) of section 8; and,
- iv. Customs duties and other national taxes payable in Timor-Leste due to the importation or sale of goods.

(b) If neither the imported goods nor identical or similar imported goods are sold at or very close to the time of importation of the goods to be valued, the customs value shall be based, subject to the provisions of point (1)(a)), at the unit price at which the imported goods or identical or similar imported goods are sold in Timor-Leste, in the same state in which they were imported, on the earliest date after the importation of the goods to be valued, but before 90 days after of that import.

(2) If neither the imported goods nor identical or similar imported goods are sold in Timor-Leste in the same state in which they were imported, the customs value shall be based, irrespective of the importer's request, on the unit selling price of the goods imported totaling the highest quantity, made after further manufacturing or processing by persons not related to the sellers, in Timor-Leste, duly taking into account the value added by the manufacturing or processing and the deductions provided for in point (1)(a).

Section 6

Value calculated as customs value

(1) The customs value of imported goods, determined pursuant to the provisions of this section, shall be based on a calculated value. The calculated value will be equal to the sum:

- (a) The cost or value of materials and manufacturing or other operations used or carried out to produce the imported goods;
- (b) An amount representative of profits and general expenses, equal to that which is generally accounted for in sales of goods of the same nature or of the same kind as the goods to be valued, carried out by producers in the exporting country for export to Timor-Leste;
- (c) The cost or value of other expenses that must be taken into account pursuant to point (2) of section 8.

(2) The authorities of Timor-Leste may not subpoena or compel a person not resident in its territory to submit accounting documents or other documents for examination or to allow access to accounting documents or other documents for the purpose of determining a calculated value. However, the information communicated by the producer of the goods, for the purposes of determining the customs value pursuant to the provisions of this section, may be verified in another country by the authorities of Timor-Leste, with the agreement of the producer and provided that the authorities of Timor-Leste to notify, with sufficient advance notice, the government of the country in question and that it does not oppose the investigation.

7. Residual valuation basis

(1) If the customs value of imported goods cannot be determined by application of the provisions of sections 1 to 6, it shall be determined by reasonable criteria compatible with the principles and general provisions of this scale and Article VII of the General Agreement on Tariffs and Trade 1994 (General Agreement on Tariffs and Trade 1994) and based on data available in Timor-Leste.

(2) The customs value determined pursuant to the provisions of this section shall not be based on:

- (a) The sale price, in Timor-Leste, of goods produced in Timor-Leste;
- (b) In a system which provides for the acceptance, for customs purposes, of the higher of two possible values;
- (c) The price of goods on the domestic market of the country of export;
- (d) At cost of production other than calculated values which have been determined for identical or similar goods in accordance with the provisions of section 6;
- (e) In the price of goods sold for export to a country other than Timor-Leste;
- (f) In minimum customs values; or,

(g) In arbitrary or fictitious amounts.

(3) If the importer so requests, he will be informed in writing of the customs value determined pursuant to the provisions of this section and of the method used to determine it.

8. Adjustment of the price paid or payable

(1) In order to determine the customs value pursuant to the provisions of section 1, the following shall be added to the price actually paid or payable for the imported goods:

(a) The following elements, insofar as they are borne by the buyer but not included in the price actually paid or payable for the goods:

- (i) Brokerage commissions and expenses, with the exception of purchase commissions;
- (ii) Cost of containers that, for customs purposes, are considered as a whole with the goods;
- (iii) Cost of packaging, including labor as well as materials;
- (iv) Expenses for transporting the imported goods to the port or place of importation;
- (v) Loading, unloading and handling expenses connected with the transport of imported goods to the port or place of importation; and,
- (vi) Cost of insurance.

(b) The value, properly allocated, of the following goods and services when supplied directly or indirectly by the purchaser, free of charge or at reduced cost, and used in the production and sale for export of the imported goods, to the extent that this amount has not been included in the price actually paid or payable:

- i. Materials, components, parts and similar elements incorporated in imported goods;
- ii. Tools, dies, molds and similar objects used for the production of imported goods;
- iii. Materials consumed in the production of imported goods;
- iv. Engineering, study, art and design work, plans and sketches carried out outside Timor-Leste and necessary for the production of imported goods;

(c) Royalties and license fees in respect of the goods to be valued, which the buyer is obliged to pay, either directly or indirectly, as a condition of sale of the goods to be valued, insofar as such royalties and license fees have not been included the price actually paid or payable;

(d) The value of any part of the proceeds from the resale, assignment or further use of the imported goods which accrues directly or indirectly to the seller.

(2) Any element that is added, pursuant to the provisions of this Section, to the price actually paid or payable shall be based solely on objective and quantifiable data.

(3) For the purpose of determining the customs value, no element shall be added to the price actually paid or payable, with the exception of those provided for in this section.”