



VIII CONSTITUTIONAL GOVERNMENT

Decree Law No 87 /2022 of 14 December

First amendment to Decree-Law No 14/2017, of 5 April, Customs Code

The process of Timor-Leste's accession to the World Trade Organization is in an advanced stage and should be concluded by the end of 2022.

Within the scope of the referred accession process, it is necessary to align the national legislation with the common legal framework that governs the Organization and its members, and some of the changes are qualified as conditions precedent to accession.

Among these changes is the alignment of national customs legislation with the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, also commonly referred to as the *Customs Valuation Agreement*.

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

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

Anticipating the intention of Timor-Leste to adhere to the World Trade Organization, the Customs Code also implemented the legal framework that governs the referred organization and its members, including the above referred Agreement on Customs Valuation.

In fact, Articles 97 and following of the Customs Code, and the respective Table 1, already provide for the transaction value as the main method of determining the customs value, subject or not to adjustments, without prejudice to the application of subsidiary methods and the residual method, foreseen in that agreement.

However, Schedule 1 of the Customs Code transposes, in a more simplified form and in a different order, certain provisions of the Agreement on Customs Valuation.

This concerns, in particular, the transposition of Article 1(2)(a) of the said Agreement, according to which the fact that the exporter and the importer are related parties should not in itself constitute a ground for disregarding the transaction value as the general rule for determining the customs value of goods, and of Article 1(2)(c), according to which the fact that the exporter and the importer are related parties should not in itself constitute a ground for disregarding the transaction value as the general rule for determining the customs value of goods. Article 1(2)(c), which provides that the determination of the customs value of identical or similar goods serves only as a comparative term for determining whether or not the transaction value between related parties is acceptable and cannot automatically be used as a replacement customs value.

On the other hand, the table 1 of the Customs Code has rearranged and merged several provisions of the Valuation Agreement, which makes it difficult to apply the Interpretative Notes in Annex I to that Agreement.

This amendment aims at ensuring that Table 1 of the Customs Code accurately reflects the content of the Valuation Agreement, including its Annex I.

This complies with the abovementioned precondition for access to the World Trade Organization and with Article 22 of the Customs Valuation Agreement whereby each Member of the Organization ensures that its laws, regulations and administrative procedures are in conformity with the provisions of the Agreement.

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

Article 1
Object

The present diploma proceeds with the first amendment to Decree-Law No 14/2017, of 5 April, the Customs Code.

Article 2
Amendment

Table 1 of the Customs Code, approved in annex to Decree-Law No 14/2017, of 5 April, shall have the wording contained in the annex to the present diploma.

Article 3
Entry into force

The present diploma shall enter into force on the day following its publication.

Approved by the Council of Ministers on 4 November 2022.

The Prime Minister,

Taur Matan Ruak

The Minister of Finance,

Rui Augusto Gomes

Promulgated on 29/11/2022

To be published.

The President of the Republic,

José Ramos-Horta

ANNEX
(Referred to in Article 2)

TABLE 1
(Referred to in Article 98)

CUSTOMS VALUE OF IMPORTED GOODS

Interpretation, application and definitions

The provisions of the present Schedule must be read and applied in accordance with the instruments that are internationally binding on the Democratic Republic of Timor-Leste, namely the Interpretative Notes set out in Annex I to the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which form an integral part thereof.

1. In this table:
 - a) the term "customs value of imported goods" means the value of goods determined for the purpose of levying ad valorem customs duties on imported goods; and,
 - b) the term "produced" shall also mean grown, manufactured or extracted.
2. In this Schedule:
 - a) The term "identical goods" means goods which are the same in all respects, including physical characteristics, quality and commercial reputation. Minor differences in appearance shall not prevent goods which otherwise meet the definition being regarded as identical;
 - b) The term "similar goods" means goods which, although not alike in all respects, have similar characteristics and are made up of similar materials, so that they fulfil the same functions and are interchangeable. The quality of the goods, commercial reputation and existence of a trademark are elements to be taken into consideration in determining whether goods are similar;
 - c) The expressions "identical goods" and "similar goods" are not applicable to goods that incorporate or contain, as the case may be, works of engineering, study, art or design, or plans and sketches, relative to which no adjustment has been made by application of sub-paragraph iv) of

number 1, paragraph b) of article 8 of the present table, due to the fact that these works have been executed in Timor-Leste;

- d) "Identical goods" or "similar goods" shall be treated as goods only if they were produced in the same country as the goods being valued;
 - e) only goods produced by a different person shall be taken into account where there are no identical goods or similar goods, as the case may be, produced by the same person who produced the goods being valued.
3. In this table, the expression "goods of the same kind or nature" means goods classified in a group or range of goods produced by a particular industry or a particular sector of an industry and includes identical or similar goods.
4. For the purposes of this Schedule, persons shall be deemed to be related only:
- a) If one is part of the management or board of directors of the enterprise of the other and reciprocally;
 - b) If they have the juridical quality of partners;
 - c) If one is the employer of the other;
 - d) If one directly or indirectly owns, controls or holds 5% or more of the issued shares or securities with voting rights in both;
 - e) If one of them directly or indirectly controls the other;
 - f) If both are directly or indirectly controlled by a third person;
 - g) If they jointly control directly or indirectly a third person; or,
 - h) if they are members of the same family.
5. Persons who are associated in business with each other by the fact that one is the exclusive agent, distributor or dealer of the other, regardless of the designation used, shall be deemed to be related for the purposes of this Schedule if they meet one of the criteria set out in paragraph 4.

Article 1

Transaction value as the primary basis of valuation

The customs value of imported goods shall be the transaction 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 Article 8, provided that:

- a) There are no restrictions on the assignment or use of the goods by the buyer, other than restrictions that:
 - i. Are imposed or required by law or by national authorities
 - ii. Limit the geographical area in which the goods may be resold; or,
 - iii. Do not substantially affect the value of the goods;
- b) The sale or price is not subject to conditions or benefits, the value of which cannot be determined with respect to the goods being valued;
- c) no part of the proceeds of any subsequent resale, assignment or 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 Article 8; and
- d) the buyer and seller are not related or, if they are, that the transaction value is acceptable for customs purposes in accordance with paragraph 2.

2.....

- a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and seller are related within the meaning of the chapeau of this Schedule is not in itself sufficient reason to consider the transaction value unacceptable. In such a case, the circumstances of the sale will be examined and the transaction value will be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the Customs Board has grounds for considering that the relationship has influenced the price, it shall communicate its grounds to the importer and allow him a reasonable opportunity to respond. If the importer so requests, the reasons shall be given in writing;

- b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with paragraph 1 when the importer demonstrates that the said value is very close to one of the following values at the same or very close point in time:
- i. Transaction value in sales to unrelated purchasers of identical or similar goods for export to Timor-Leste.
 - ii. Customs value of identical or similar goods as determined by application of the provisions of Article 5;
 - iii. iii. Customs value of identical or similar goods, as determined by application of the provisions of Article 6;

In applying the above criteria, due account shall be taken of any differences in demonstrated levels of trade, quantities, the elements listed in Article 8 and costs incurred by the seller in sales where it and the buyer are not related and which the seller does not incur in sales where it and the buyer are related

- c) The criteria set out in paragraph 2(b) are intended to be used at the initiative of the importer for comparison purposes only. Under paragraph 2(b), substitute values cannot be established.

Article 2

Transaction value of identical goods as customs value

1.

- a) Where the customs value of the imported goods cannot be determined by application of the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to Timor-Leste and exported at the same time as the goods being valued or at a very close moment;
- b) When applying the present Article, the customs value shall be determined by resorting to the transaction value of identical goods, sold at the same commercial level and in substantially the same quantity as the goods being valued. In the absence of such sales, the transaction value of

identical goods sold at a different level of trade and/or in different quantities shall be used, adjusted to take account of differences attributable to the level of trade and/or quantity, provided that such adjustments, irrespective of whether they involve an increase or a decrease in value, are made on the basis of evidence which clearly demonstrates that they are reasonable and accurate.

2. Where the costs and expenses referred to in Article 8(2) are included in the transaction value, that value shall be adjusted to take account of appreciable differences in those costs and expenses between the imported goods and the identical goods under consideration as a result of differences in distances and modes of transport.
3. Where, in the application of this Article where more than one transaction value of similar goods is established in the application of this Article, the lowest transaction value shall be used to determine the customs value of the imported goods.

Article 3

Transaction value of similar goods as customs value

1.
 - a) Where the customs value of the imported goods cannot be determined by application of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to Timor-Leste and exported at the same time as the goods being valued or at a very close time;
 - b) When the present article is applied, the customs value shall be determined by resorting to the transaction value of similar goods, sold at the same commercial level and in substantially the same quantity as the goods being valued. In the absence of such sales, the transaction value of similar goods sold at a different level of trade and/or in different quantities shall be used, adjusted to take account of differences attributable to the level of trade and/or quantity, provided that such adjustments, irrespective of whether they involve an increase or a decrease in value, are made on the basis of evidence which clearly demonstrates that they are reasonable and accurate.

2. Where the costs and expenses referred to in Article 8(2) are included in the transaction value, the transaction value shall be adjusted to take account of appreciable differences in those costs and expenses between the imported goods and the like goods under consideration which are attributable to differences in distances and modes of transport.

Where, in applying this Article, more than one transaction value of similar goods is found, the lowest transaction value shall be used for the purpose of determining the customs value of the imported goods.

Article 4 **Subsidiary methods**

Where the customs value of imported goods cannot be determined by applying the provisions of Articles 1, 2 and 3 of this Schedule, the customs value shall be determined by applying the provisions of Article 5 or, where the customs value cannot be determined by applying that Article, by applying the provisions of Article 6; however, with the written permission of the national authorities, at the importer's request, the order of application of Articles 5 and 6 may be reversed.

Article 5 **Deductive value as customs value**

1.

- a) Where 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 by application of the provisions of this Article, shall be based on the unit selling price of the imported goods, or identical or similar imported goods, totalling the highest quantity, provided they are made to persons not related to the sellers, at or very near the time of importation of the goods to be valued, subject to the following deductions:
 - i. Commissions usually paid or agreed upon, or margins usually practiced for profits and general expenses related to sales, in Timor-Leste, of imported goods of the same nature or kind;

- ii. Usual transport and insurance costs, as well as related expenses incurred in Timor-Leste;
 - iii. If applicable, other costs and expenses listed in paragraph 2 of Section 8; e,
 - iv. Customs duties and other national taxes payable in Timor-Leste in connection with the importation or sale of the goods;
- b) Where imported goods or identical or similar imported goods are sold at or very soon after the importation of the goods being valued, the customs value shall, subject to paragraph (1)(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Timor-Leste, in the same condition as they were imported, on the earliest date after the importation of the goods being valued, but within 90 days of such importation.
2. Where imported goods or identical or similar goods are sold in Timor-Leste in the same state as they were imported, the customs value shall, irrespective of any request by the importer, be based on the unit selling price of the imported goods totalling the highest quantity, made after working or further processing to persons unrelated to the sellers, in Timor-Leste, with due regard to the value added by the working or processing and the deductions provided for in paragraph 1(a).

Article 6

Value calculated as customs value

1. The customs value of imported goods, as determined by application of the provisions of this Article, shall be based on a computed value. The computed value shall be equal to the sum of:
- a) the cost or value of materials and of manufacturing or other operations used or performed in producing the imported goods;
 - b) An amount representing profit and general expenses, equal to that generally accounted for in sales of goods of the same nature or kind as the goods being valued, made by producers in the exporting country for export to East Timor;

- c) The cost or value of other expenses that must be taken into account under subsection 8.2.
- 2. The national authorities may not summon or compel a person not residing in their territory to produce accounting or other documents for examination or to allow access to accounting or other documents for the purpose of determining an estimated value. However, information supplied by the producer of the goods for the purposes of valuation under the provisions of this Article may be verified in another country by the national authorities, with the agreement of the producer and provided that the national authorities give sufficient advance notice to the government of the country concerned and that the latter does not object to the enquiry.

Article 7

Residual basis of assessment

- 1. Where the customs value of imported goods cannot be determined by application of the provisions of Articles 1 to 6, it shall be determined by reasonable criteria compatible with the principles and general provisions of the *present Schedule and Article VII of the General Agreement on Tariffs and Trade 1994*, and on the basis of data available in East Timor.
- 2. The customs value determined by applying the provisions of the present article shall not be based:
 - a) on the selling price in Timor-Leste of goods produced in Timor-Leste;
 - b) A system that 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 exporting country;
 - d) In the cost of production distinct from the calculated values that have been determined for identical or similar goods in accordance with the provisions of section 6
 - e) The price of goods sold for export to a country other than Timor-Leste;
 - f) In minimum customs values; or

- g) Arbitrary or fictitious values.
- 3. If the importer so requests, he shall be informed in writing of the customs value as determined in accordance with the provisions of this Article and of the method used to determine it.

Article 8

Adjustment of the price paid or payable

- 1. In order to determine the customs value pursuant to Article 1, the price actually paid or payable for the imported goods shall be increased by:
 - a) The following items, to the extent that they are borne by the buyer but have not been included in the price actually paid or payable for the goods:
 - i. Commissions and brokerage costs, other than buying commissions
 - ii. Cost of containers which, for customs purposes, are deemed to form a whole with the goods;
 - iii. Cost of packaging, comprising labour as well as materials;
 - b) The value, appropriately imputed, of the following products and services when they are supplied directly or indirectly by the buyer, 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 value has not been included in the price actually paid or payable:
 - i. Materials, components, parts and similar items incorporated in the imported goods;
 - ii. Tools, dies, molds and similar objects used for the production of the imported goods;
 - iii. Materials consumed in the production of the imported goods;

- iv. Engineering, study, art and design works, plans and sketches executed outside East Timor and necessary for the production of the imported goods;
 - c) Royalties and licence fees relating to the goods being valued, which the buyer is obliged to pay, whether directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and licence fees have not been included in the price actually paid or payable
 - d) The value of any part of the proceeds of the resale, assignment or further use of the imported goods which accrues directly or indirectly to the seller.
2. Without prejudice to the provisions of the preceding number, in order to determine the customs value by application of the provisions of Article 1, the following elements shall also be added to the price actually paid or payable for the imported goods.
- a) Costs of transporting the imported goods to the port or place of importation;
 - b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
 - c) cost of insurance.
3. Any element that is added, by application of the provisions of this Article, to the price actually paid or payable shall be based exclusively on objective and quantifiable data.
4. In determining the customs value, no element shall be added to the price actually paid or payable, other than those provided for in this Article.
