



UNDERSTANDING THE FUNDAMENTALS OF CUSTOMS VALUATION IN NIGERIA



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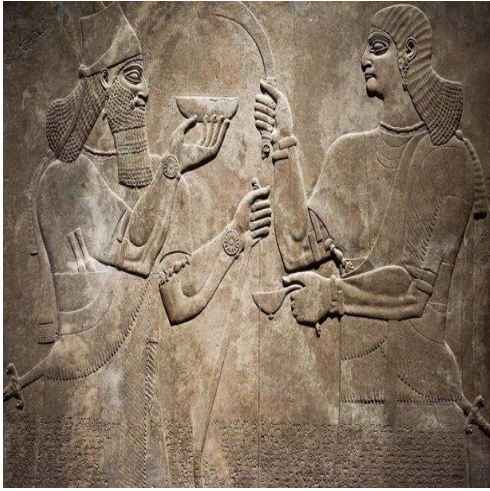
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HISTORICAL BACKGROUND OF CUSTOMS VALUATION



Starting in the 1950s, customs duties were assessed by many countries according to the Brussels Definition of Value (BVD). Under this method, a normal market price, defined as “the price that a good would fetch in an open market between a buyer and seller independent of each other,” This method caused widespread dissatisfaction among traders, as price changes and competitive advantages of firms were not reflected until the notional price was adjusted by the customs office after certain periods of time.

Subsequently, the Tokyo Round Valuation Code, or the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT), concluded in 1979, established a positive system of Customs Valuation based on the price actually paid or payable for the imported goods. Based on the “transaction value”, it was intended to provide a fair, uniform and neutral system for the valuation of goods for customs purposes, conforming to commercial realities.

The Tokyo Round Code was replaced by the World Trade Organisation (WTO) Agreement on Implementation of Article VII of the GATT 1994 (“Agreement”). This Agreement is essentially the same as the Tokyo Round Valuation Code and applies only to the valuation of imported goods for the purpose of levying ad valorem duties on such goods.

This differs from the “notional” value used in the Brussels Definition of Value (BVD). As a stand-alone agreement, the Tokyo Round Valuation Code was signed by more than 40 contracting parties.



CUSTOM PRACTICE IN NIGERIA

Customs duties in Nigeria are the oldest form of modern taxation. Their introduction dates back to 1860 known as import duties, which represents taxes on imports into Nigeria, charged either as a percentage of the value of imports or as a fixed amount of contingent on quantity.

Prior to the introduction of Structural Adjustment Programme (SAP) in 1986, customs duties were as high as 300 percent but currently range between 2percent and 75percent. The Customs and Excise management Act of 1958 and its amendments provided the statutory backing for the implementation of the tax.

The present paramilitary Nigeria Customs Service is a successor to the colonial Director General of customs who was appointed in 1891 to collect Inland Revenue in the Niger Coast Protectorate.

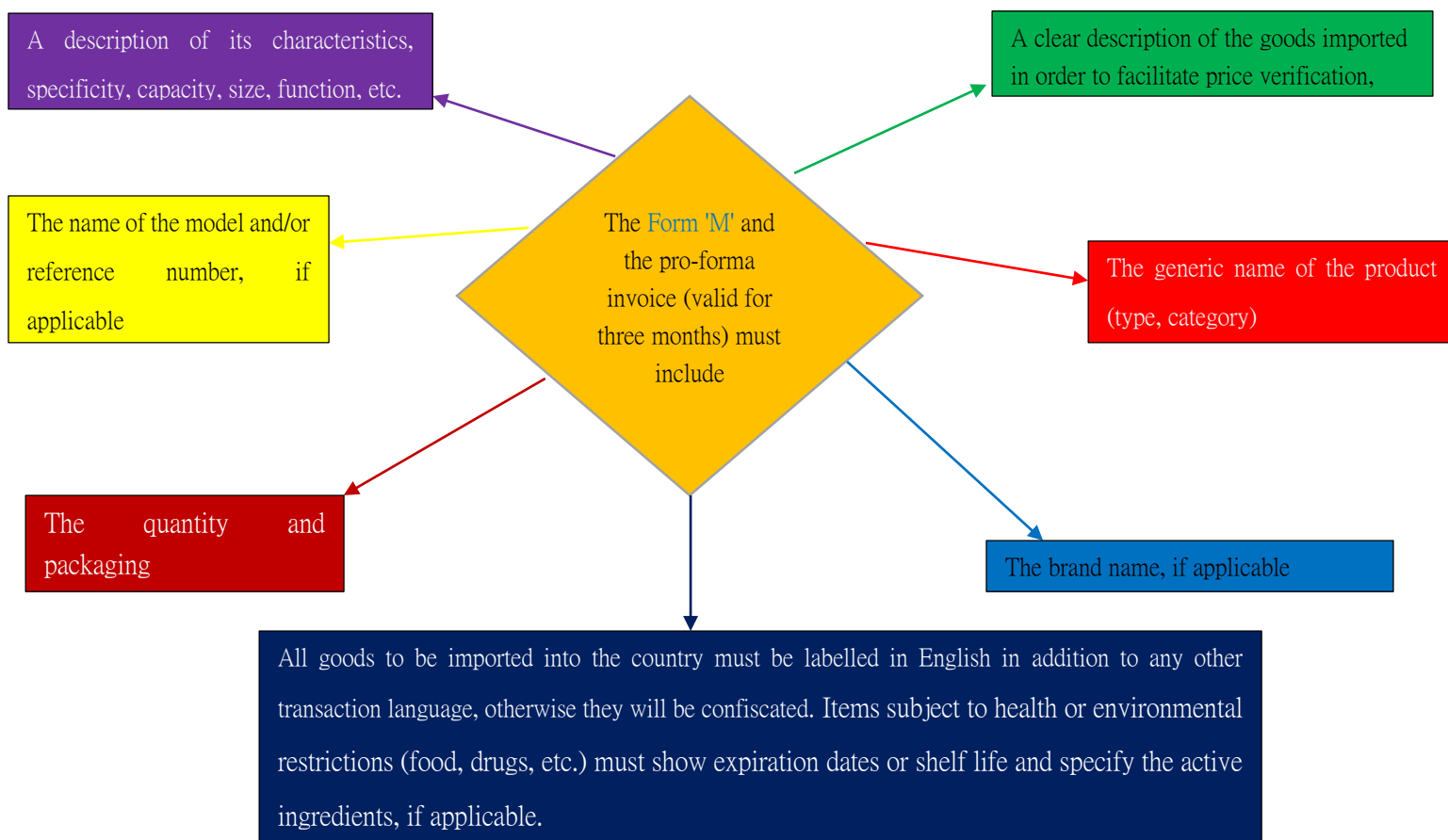


IMPORTATION IN NIGERIA



Customs Duties and Taxes on Imports is charged at the rate of 11.2% in Nigeria at the time of this write-up. Nigeria has also signed the Convention on the Harmonized Commodity Description and Coding System and the Nigerian Customs that uses the HS nomenclature. Furthermore, Customs, Excise, Tariff (consolidation) Act 1995 states that where in any heading or in any harmonized system code, of the first schedule to this Act, a rate of duty payable shall be the amount of the rate shown in the customs duty rate for the year or years in which the goods concerned are imported into Nigeria, and on the importation into Nigeria of goods classified in that heading or its code there shall, subject to the provisions of section 4 of the Act changed an import duty at the rate shown in the customs duty rate column

On 1 January 2006, Nigeria adopted a system of destination inspection (DI) which requires that any person wishing to import physical goods into Nigeria must first have the so-called 'M' form validated by an approved bank. The Form 'M' is valid for six months for all import goods except machinery and equipment in which case the form is valid for one year. Applications for subsequent renewal must be addressed to the Director of Trade and Exchange Department of the Central Bank of Nigeria. Furthermore, supporting documents with the Form 'M' must be clearly marked 'valid for Forex or Not valid for Forex' as appropriate. All applications regarding goods subject to inspection at destination must be coded 'BA' and those exempted 'CB' in the prefix of the numbering system of the Form 'M'.



Imported products must be accompanied by the following

- The Combined Certificate of Value and Origin (CCVO) containing information additional to the pro-forma invoice;
- The Form 'M' number;
- Appropriate description of the goods;
- The destination port;
- An identification of the consignment, the date of shipment, country of origin, country of supply;
- A packing list;
- A 'shipped' or 'accepted without reservation' bill of lading / air waybill / consignment note / waybill
- The manufacturer's certificate must specify the production standards; if not applicable, a phytosanitary certificate or chemical analysis report must be supplied;
- Certificates of laboratory tests for chemicals, foods, beverages, pharmaceuticals, electrical appliances and other regulated products, as appropriate;
- Valuable samples can be imported duty-free, by paying a deposit or a deposit equal to the charges payable on importing the specific goods. The deposit will be cancelled and/or refunded when the samples are re-exported.

Importation Prohibition Lists



Nigeria is an open market with a population of over 200,000,000.00 (two hundred million) people. This means products from other countries can be sold in the Nigerian market. However, the Nigerian Customs Service through the "Import Prohibition List", has banned some products from importation to Nigeria. The Nigerian Customs Service would seize and in most likely destroy products imported into Nigeria in contravention of the Import Prohibition List.

List of some Prohibited Goods

- Refined vegetable oils and fats but excluding refined linseed, castor and olive oils crude vegetable oil;
- Live or dead birds including frozen poultry; Pork and beef; Birds eggs but excluding hatching eggs;
- Cane or beet sugar and chemically pure sucrose, in solid form containing added flavouring or colouring matter in retail packs;
- Cocoa butter, powder and cakes; Spaghetti/noodles;
- Fruit Juice in retail pack; Waters, including mineral waters and aerated waters containing added sugar or sweetening matter or Flavoured, ice snow but excluding energy or health drinks, liquid dietary supplements, beer and stout whether bottled, canned or otherwise packed;
- Bagged Cement;
- Medicaments falling under Headings 3003 and 3004 (Paracetamol tablets and syrups; Cotrimoxazole tablets syrups; Metronidazole tablets and syrups; Chloroquine tablets and syrups; Pyrantel Pamoate tablets and Syrups;
- Intravenous Fluids including dextrose, normal saline, etc.; Waste pharmaceuticals);
- Soaps and detergents in retail packs only;
- Mosquito repellent coils; All types of foot wears;
- Sanitary wares of plastics and domestic articles and wares of plastics, flushing cistern and waterless toilets but excluding baby feeding bottles;
- Rethreaded and used pneumatic tyres but excluding used trucks tyres for rethreading;
- Hollow glass bottles of a capacity exceeding 150mls (0.15 litres) of all kinds used for packaging of beverages by breweries and other beverage and drink companies;
- Used compressors, used air conditioners and used fridges/freezers; Used Motor Vehicles above fifteen (15) years from the year of manufacture;
- Furniture but excluding Baby walkers, laboratory cabinets such as microscope table, fume cupboards, laboratory benches, Stadium Chairs, height adjustments device, base sledge, seat frames and control mechanism, arm guide and head guides among others.

No Import Duty on Goods for Personal Use



In a recent case, the Federal High Court sitting in Abuja Judicial Division, has ruled that the Nigerian Custom Service cannot collect duty on goods/personal effect of a passenger, in its judgment in *Kehinde Ogunwumiju, SAN v. Nigerian Customs Service Board & Anor: Suit No: FHC/ABJ/CS/1113/2019*. The Court in its judgment having analysed the provisions of Section 8 of the Customs, Excise Tariff, etc. (Consolidation) Act and the 2nd Schedule to the Customs, Excise Tariff, etc. (Consolidation) Act and was of the view that the goods contained in a passenger's baggage are exempted from import duty and other related charges provided that the said goods are not intended for sale, barter or exchange; and personal and household effects.

The Court found that based on the state of the evidence before it, the Plaintiff had established that the Louis Vuitton Lap Top Bag found in his baggage by the officers of the Nigerian Customs Service was his personal effect and meant for his personal use. The Court also found that before the Defendants could lawfully demand and collect import duty and other related charges in respect of the said Louis Vuitton Lap Top Bag found in the Plaintiff's baggage, the Defendants had to establish via cogent and credible evidence that the said bag was meant for sale, exchange or barter.

Accordingly, the court ruled that the defendants having failed to establish via evidence that the said bag found in the Plaintiff's baggage was meant for sale, exchange or barter, there was no legal basis upon which the officers of the Nigerian Customs Service demanded and collected import duty and other related charges from the Plaintiff in respect of the said bag.

Finally, the Court having found that the decision and action of the Defendants to demand and collect from the Plaintiff import duty and other related charges in respect of his personal effect is unlawful, null and void ordered the Defendants to refund the sum of ₦156, 955. 20k (One Hundred and Fifty-Six Thousand, Nine Hundred and Fifty-Five Naira, Twenty Kobo) in import duty and other related charges to the Plaintiff and pay to the Plaintiff the sum of ₦5, 000, 000.00 as exemplary damages.

CUSTOMS VALUATION

Customs Valuation is the determination of the economic value of goods declared for importation. In other words, customs valuation is used to determine the value of goods when they are being entered into the various customs procedures e.g. import, export, warehousing and processing under customs control.

The Agreement stipulates that customs valuation shall, except in specified circumstances, be based on the actual price of the goods to be valued, which is generally shown on the invoice. For cases in which there is no transaction value, or where the transaction value is not acceptable as the customs value because the price has been distorted as a result of certain conditions, the Agreement lays down five other methods of customs valuation, to be applied in the prescribed hierarchical order.



Explaining the Methods:

TRANSACTION



METHOD 1 — TRANSACTION VALUE (ARTICLE 1)

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, and includes all payments made as a condition of sale of the imported goods by the buyer to

the seller, or by the buyer to a third party to satisfy an obligation of the seller. The conditions to be fulfilled for this method are:

Evidence of sale: There must be evidence of a sale for export to the country of importation (i.e. commercial invoices, contracts, purchase orders, etc.).

Buyer and seller not related, otherwise: The buyer and seller are not related, but even if so, the use of the transaction value is acceptable if the importer demonstrates that: the relationship did not influence the price, or the transaction value closely approximates a test value.

No restriction on the disposition or use: There must be no restriction on the disposition or use of the goods by the buyer, other than restrictions which are imposed or required by law in the country of importation and also are limited to the geographic area in which the goods may be resold;

Full prices must be disclosed: No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless adjustment can be made in accordance with provisions in Article 8.

It should not be subject to additional conditions: The sale or price must not be subject to conditions or considerations for which a value cannot be determined with respect to the goods being valued. Examples of such conditions are: the seller establishes the price of the imported goods on the condition that the buyer will also buy other goods in specified quantities; the price of the imported goods is dependent upon the price or prices at which the buyer sells other goods to the seller;

VALUE



METHOD 2 — TRANSACTION VALUE OF IDENTICAL GOODS (ARTICLE 2)

For this method to be used, the goods must be sold for export to the same country of importation as the goods being valued. The goods must also be exported at or about the same time as the goods being valued. The transaction value is calculated in the same manner on identical goods if the goods are:



- the same in all respects including physical characteristics, quality, and reputation;

- produced in the same country as the goods being valued;

- and produced by the producer of the goods being valued.

Exceptions

Some exceptions under Method 2 are accepted, in particular:

- where there are no identical goods produced by the same producer in the country of production of the goods being valued, identical goods produced by a different producer in the same country may be taken into account.
- minor differences in appearance would not preclude goods which otherwise conform to the definitions from being regarded as identical.

METHOD 3 — TRANSACTION VALUE OF SIMILAR GOODS (ARTICLE 3)

For this method to be used, the goods must be sold to the same country of importation as the goods being valued. The goods must be exported at or about the same time as the goods being valued. The transaction value is calculated in the same manner on similar goods if:



goods closely resembling the goods being valued in terms of component materials and characteristics

goods which are capable of performing the same functions and are commercially interchangeable with the goods being valued

goods which are produced in the same country as and by the producer of the goods being valued.



METHOD 4 — DEDUCTIVE VALUE

This involves the deduction of value from the price of the greatest aggregate quantity sold. The Agreement provides that when customs value cannot be determined on the basis of the transaction value of the imported goods or identical or similar goods, it will be determined on the basis of the unit price at which the imported goods or identical or similar goods are sold to an unrelated buyer in the greatest aggregate quantity in the country of importation. Under Article 5.1, the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is to be the basis for establishing the customs value. The buyer and the seller in the importing country must not be related and the sale must take place at or about the time of importation of the goods being valued. If no sale took place at or about the time of importation, it is permitted to use sales up to 90 days after importation of the goods being valued.

b. Deductions from the price at the greatest aggregate quantity

Since the starting point in calculating deductive value is the sale price in the country of importation, various deductions are necessary to reduce that price to the relevant customs value:

- commissions usually paid or agreed to be paid, the sum of profits and general expenses added in connection with sales must also be deducted;
- the usual transport costs and corresponding insurance are to be deducted from the price of the goods when these costs are usually incurred within the country of importation;
- the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods are also to be deducted;
- value added by assembly or further processing, when applicable.

a. Determination of the greatest aggregate quantity sold

The greatest aggregate quantity is, according to the Interpretative Note to that Article, the price at which the greatest number of units is sold to unrelated persons at the first commercial level after importation at which such sales take place. To determine the greatest aggregate quantity all sales at a given price are taken together and the sum of all the units of goods sold at that price is compared to the sum of all the units of goods sold at any other price. The greatest number of units sold at one price represents the greatest aggregate quantity.

METHOD 5 — COMPUTED VALUE

Computed value, the most difficult and rarely used method, determines the customs value on the basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of exportation to the country of importation of goods of the same class or kind.



METHOD 6 — FALL-BACK OR DERIVATIVE OR RESIDUAL

VALUATION PROVISION METHOD

Customs value determination based on —reasonable means consistent with the principles and general provisions of the Agreement, Article VII GATT and based on available data.

When the customs value cannot be determined under any of the previous methods, it may be determined using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of GATT, and on the basis of data available in the country of importation. To the greatest extent possible, this method should be based on previously determined values and methods with a reasonable degree of flexibility in their application.

Valuation criteria not to be used

Under the fall-back method, the customs value must not be based on:

- the selling price of goods in the country of importation (i.e. the sale price of goods manufactured in the importing country);
- a system which provides for the acceptance for customs purposes of the higher of two alternative values (the lowest should be used);
- the price of goods on the domestic market of the country of exportation (valuation on this basis would go against the principle in the Preamble that valuation procedures should not be used to combat dumping);
- the cost of production other than computed values which have been determined for identical or similar goods (valuation must be arrived at based on data available in the country of importation);
- the price of goods for export to a third country (two export markets are always to be treated as separate and the price to one should not control the customs value in the other);
- minimum customs value (unless a developing country has taken the exception which allows for use of minimum values); and
- arbitrary or fictitious values (these prohibitions are aimed at systems which do not base their values on what happens in fact in the marketplace, as reflected in actual prices, in actual sales, and in actual costs, reason of the importation or sale of the goods are also to be deducted.

CONCLUSION



The customs value is essential to determine the correct amount of any customs duty to be paid on imported goods. Customs duties can be designated in either specific or ad valorem terms or as a mix of the two. In case of a specific duty, a concrete sum is charged for a quantitative description of the good. The customs value of the good does not need to be determined, as the duty is not based on the value of the good but on other criteria. In this case, no rules on customs valuation are needed and the Valuation Agreement does not apply. In contrast, an ad valorem duty depends on the value of a good. Under this system, the customs valuation is

multiplied by an ad valorem rate of duty (e.g. 5 per cent) in order to arrive at the amount of duty payable on an imported item.

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