

No. 31172

MULTILATERAL

Convention on the Central American Tariff and Customs Regime. Concluded at Guatemala City on 14 December 1984

Central American Legislation on the Customs Value of Goods, Annex "B" to the above-mentioned Convention (with regulations). Concluded at Guatemala City on 7 June 1985

Protocol to the above-mentioned Convention of 14 December 1984. Signed at Guatemala City on 9 January 1992

Authentic texts: Spanish.

Registered by the General Secretariat of the Central American Integration System on 24 August 1994.

MULTILATÉRAL

Convention relative au régime tarifaire et douanier de l'Amérique centrale. Conclue à Guatemala le 14 décembre 1984

Législation relative à la valeur en douane des marchandises applicable à l'Amérique centrale, Annexe « B » à la Convention susmentionnée (avec règlement d'application). Conclue à Guatemala le 7 juin 1985

Protocole de la Convention susmentionnée du 14 décembre 1984. Signé à Guatemala le 9 janvier 1992

Textes authentiques : espagnol.

Enregistrés par le Secrétariat général du système d'intégration de l'Amérique centrale le 24 août 1994.

[TRANSLATION — TRADUCTION]

CONVENTION¹ ON THE CENTRAL AMERICAN TARIFF AND CUSTOMS REGIME

The Governments of the Republics of Guatemala, El Salvador, Nicaragua and Costa Rica,

Convinced that the economic integration process is an effective instrument for promoting the social and economic development of the countries of Central America, and that all sectors of the population should share in its benefits;

Bearing in mind that there is broad consensus in the countries of Central America regarding the need to adjust and direct the economic integration process with a view to making it a genuine instrument and factor for the economic development of the region;

Aware that economic and social conditions in Central America have undergone profound changes and that Central American countries require a new system in order to be able to adapt in a flexible and timely way to changing circumstances;

Therefore have decided to sign the present agreement, which shall be called the “Convention on the Central American Tariff and Customs Regime”.

CHAPTER I. GENERAL PROVISIONS

Article 1. ESTABLISHMENT

By the present Convention the Contracting States establish a new Central American Tariff and Customs Regime, which is designed to meet the challenge of reactivating and restructuring the economic integration process and furthering economic and social development in Central America.

Article 2. ABBREVIATIONS AND DEFINITIONS

For the purposes of this Convention, the abbreviations and definitions listed below have the following meanings:

¹ Came into force on 18 September 1985, i.e., 8 days after the date of deposit with the General Secretariat of the Organization of Central American States of the third instrument of ratification, in accordance with article 28:

<i>Participant</i>	<i>Date of deposit of the instrument of ratification</i>
El Salvador	26 March 1985
Costa Rica	21 May 1985
Guatemala	9 September 1985
Nicaragua	12 September 1985

Subsequently, the Convention came into force in respect of the following State on the date of deposit of its instrument of accession with the General Secretariat of the Organization of Central American States, in accordance with article 27:

<i>Participant</i>	<i>Date of deposit of the instrument of accession</i>
Honduras	12 February 1993
(With effect from 12 February 1993.)	

- REGIME:* The Central American Tariff and Customs Regime established in this Convention.
- COUNCIL:* The Central American Tariff and Customs Council established by this Convention.
- SIECA:* The Permanent Secretariat of the General Treaty on Central American Economic Integration.¹
- CAUCA:* The Central American Uniform Customs Code.
- RECAUCA:* Regulations of the Central American Uniform Customs Code.
- NAUCA II:* The new Standard Central American Tariff Nomenclature.
- CCCN:* The Brussels Customs Cooperation Council Nomenclature.
- Import duties:* The levies contained in the Central American Import Tariff which are imposed when imports clear customs

Article 3. CONTENT

The Regime shall consist of the following:

- (a) The Central American Import Tariff, as described under the headings concerning customs duties which shall appear in Annex “A”.²
- (b) The Central American legislation on the Customs Value of Goods, contained in Annex “B” and its Regulations.
- (c) The Central American Uniform Customs Code and its Regulations.
- (ch) The decisions and other common tariff and customs provisions arising out of this Convention.

Article 4. OBJECTIVES

The Regime is a basic instrument of the Central American economic integration process and has the following objectives:

- (a) To direct and strengthen the development of the production sectors;
- (b) To meet fiscal and balance-of-payments obligations;
- (c) To stimulate production efficiency and rationalize the cost of tariff protection, especially for the consumer;
- (ch) To help in achieving the foreign trade policy objectives of the Contracting States;
- (d) To contribute to the equitable distribution of the benefits and costs of economic integration; and
- (e) To refine the organization and administration of the Central American customs services with a view to gradually and progressively consolidating a regional tariff and customs system.

¹ United Nations, *Treaty Series*, vol. 455, p. 3.

² The revised text of Annex A was registered with the Secretariat of the United Nations on 1 July 1997 under No. A-31172.

CHAPTER II. ORGANIZATION

Article 5. ORGANS

The Regime shall have the following organs:

- (a) The Central American Tariff and Customs Council;
- (b) The committees; and
- (c) The Secretariat.

Article 6. THE COUNCIL

The Council shall be the organ responsible for managing and administering the Regime to which this Convention refers.

The Council shall consist of the Ministers legally responsible for economic integration matters in the respective States or their designated representatives. When the nature of its work so requires, the Council shall meet with the Ministers of the Treasury or of Finance, the Presidents of the Central Banks, or other Ministers or their designated representatives.

Article 7. ROLE OF THE COUNCIL

The Council shall:

- (a) Take such decisions as are necessary for the functioning of the Regime;
- (b) Resolve differences between Contracting Parties concerning the implementation of the present Convention and its related and additional instruments;
- (c) Approve rates of customs duty and modifications thereto in accordance with this Convention;
- (ch) Discharge the other functions laid down in this Convention.

Article 8

The Council shall be convened by SIECA at the request of one of its members, the other members having been consulted. Attendance of Council meetings shall be obligatory for the Contracting States. If the first notice of a meeting does not result in all the Contracting States being present, a second notice shall be issued and the meeting shall be held if at least three of the Contracting States are present.

If the number of Contracting States increases to five, the meeting shall be held after the second notice is issued if at least four Contracting States are present.

Article 9. VOTING

The Council shall take its decisions by an affirmative vote of the Contracting Parties.

If the Council is unable to reach a unanimous decision on any question considered at a meeting, it shall, at its next meeting, review the reasoning of the countries which cast a negative vote, together with a technical opinion provided by the Secretariat or by another technical body concerned with economic integration. If the Council is unable to reach a unanimous decision at the second meeting, it shall, not

more than 10 working days after the end of the second meeting, hold a new, conciliatory meeting; if no unanimous decision is reached at the conciliatory meeting, the Council may adopt the decision with the concurring vote of at least three Contracting States, in which case only those States voting in favour shall be bound by the decision.

The same procedure shall be followed in the case of decisions relating to the negotiation, approval and period of validity of Annex "A", the implementation of chapter VI of this Convention and the issuing of regulations.

As regards matters other than those specified in the preceding paragraph, the Council shall decide unanimously whether the decisions are to be adopted in accordance with the procedure established in the second paragraph of this article or are to be adopted unanimously.

Each State shall have one vote, irrespective of the number of officials representing it.

Article 10. COMMITTEES AND OTHER BODIES

The Council shall establish such executive or advisory committees or working groups as may be necessary to deal with the specialized features of the Regime. The committees or groups shall consist of high-level representatives appointed by each of the Contracting States.

The Council shall at the very least establish the following committees:

- (a) The Tariff Policy Committee, and
- (b) The Customs Committee.

The Council shall determine the composition, functions and spheres of competence of the committees.

The committees or working groups shall meet and take decisions in accordance with the relevant regulations approved by the Council.

Article 11. ROLE OF THE SECRETARIAT

SIECA shall be the Secretariat of the Council, the committees and the working groups; it shall ensure that this Convention and the decisions of the Council and the committees are duly implemented and may take the initiative in proposing the measures needed to implement and refine the Regime.

Article 12. DECISIONS

The decisions referred to in articles 9 and 10 of this Convention may be of the following nature:

(a) *Regulations*: rules of a general nature arising out of this Convention and applicable in the territories of the Contracting States.

(b) *Resolutions*: Rules concerning specific matters adopted by the Council in accordance with its prerogatives under this Convention. The Council may delegate the right to adopt resolutions in particular areas to the committees.

CHAPTER III. CENTRAL AMERICAN IMPORT TARIFF

Article 13. DEFINITION

The Central American Import Tariff appearing in Annex “A” contains the nomenclature for the official classification of goods which may be imported into the territories of the Contracting States, the import duties applicable and the regulations governing implementation of its provisions.

Article 14. NOMENCLATURE

NAUCA II constitutes the official classification of goods covered by the Central American Import Tariff. The basis for NAUCA II is the Customs Cooperation Council Nomenclature (CCCN), together with any additions and changes thereto at the date of signature of the present Convention. For the purposes of the uniform application of the Central American Import Tariff, the Explanatory Notes of the CCCN shall serve as a guide to the interpretation of NAUCA II so long as NAUCA II maintains its relationship with the CCCN and barring any decision of the Council to the contrary. NAUCA II may contain Central American Complementary Notes and Rules. The same Nomenclature shall be used for the classification of exports.

Article 15. STRUCTURE AND MODIFICATION OF THE NOMENCLATURE

NAUCA II is divided into sections, chapters, sub-chapters, headings, sub-headings and items. The sections, chapters, sub-chapters and headings correspond to those contained in the CCCN.

The sub-headings and items are additions specific to NAUCA II. The Council may modify the sections, chapters, sub-chapters and headings, the descriptions thereof, the legal notes, and the General Rules of the CCCN in order to adapt them to any changes in the Nomenclature made by the Customs Cooperation Council, with a view to maintaining at all times the correspondence referred to in the preceding paragraph.

The Council may establish, delete, replace or modify the Central American Complementary Notes and Rules and the sub-headings and items as it sees fit, since they are an integral part of NAUCA II.

Changes to NAUCA II as referred to in this article shall not entail any changes in the rates of the corresponding import duties, except when they are made in accordance with the provisions of chapter VI of this Convention.

Article 16. CLASSIFICATION OF GOODS

The official classification of goods imported into the customs territory of each Contracting State shall be determined in accordance with the customs legislation in force in each State.

CHAPTER IV. IMPORT DUTIES

Article 17. CUSTOMS DUTIES

Except as otherwise provided for in chapter V of this Convention, all goods imported into the customs territory of a Contracting State shall be subject to pay-

ment of the customs duties established in the Tariff, which shall be expressed in *ad valorem* terms.

Article 18. OTHER CUSTOMS DUTIES

The Contracting States undertake not to impose any import or import-related duties other than those established in the Central American Import Tariff, in accordance with this Convention.

Article 19. ASSESSMENT BASIS FOR DUTIES

All matters relating to the assessment basis, the determination thereof and the application of customs duties shall be governed by the provisions contained in Annex “B” to this Convention.

Article 20. CURRENCY UNIT AND CURRENCY CONVERSION

For the purposes of unity and uniformity in customs matters, the currency unit shall be the Central American peso, which shall have the value assigned to it by the Central American Monetary Council.

Foreign currencies shall be converted to Central American pesos on the basis of the exchange rate resulting from the international quotation for the foreign currency vis-à-vis the official value of the Central American peso, as defined in the preceding paragraph, on the date of acceptance of the import document. Such quotation shall be provided by the Central Bank of the Contracting State in question.

The conversion of Central American pesos to the currencies of the Contracting States shall be based on the value applicable on the date of acceptance of the import document, in accordance with the relevant domestic legislation.

CHAPTER V. RELIEF AND EXEMPTIONS FROM CUSTOM DUTIES

Article 21. SOLE PROVISION

The Contracting States shall not grant relief or exemptions from import duties except in the following cases:

(a) Household goods belonging to residents returning permanently after an absence of 24 months;

(b) Goods protected under the provisions of regional and international conventions in force or of national legislation relating to purposes or activities other than the manufacturing industry to which the Central American Agreement on fiscal incentives to industrial development and its Protocols¹ refer;

(c) Goods imported for the development of craft activities, small-scale industry and industries that export to third countries;

(ch) Goods for duly classified activities which the Council authorizes;

(d) Goods produced in the country and re-imported within three years without having undergone any further processing.

¹ United Nations, *Treaty Series*, vol. 780, p. 203; vol. 908, p. 104; vol. 982, p. 363; and vol. 1245, p. 452.

The Contracting States may also authorize the suspension of customs duties in their respective territories for the temporary import or export of goods in accordance with customs legislation, with the possibility of successive renewals for periods equal to those originally authorized.

Each Contracting State shall issue the necessary regulations.

CHAPTER VI. MODIFICATION OF IMPORT DUTIES AND APPLICATION OF COMPLEMENTARY MEASURES

Article 22. AUTHORITY AND CONDITIONS FOR CHANGES

The Council may, within the limits of and in accordance with the conditions and criteria established in this chapter, determine changes to import duties, with a view to achieving the objectives of the Convention and, in particular, promoting productive activities, protecting Central American consumers and contributing to the implementation of the foreign trade policies of the Contracting States.

Article 23. SCOPE OF THE CHANGES

The authority to which the preceding article refers shall be exercised by the Council with a view to establishing rates of customs duty within a range of 1 per cent to 100 per cent of the nominal *ad valorem* tariff.

Unless the Council stipulates otherwise, any customs duties which have been modified in accordance with the provisions of this chapter shall not be changed again until one year has elapsed from the date on which the modification came into force.

Article 24. IMPLEMENTATION OF THE DECISIONS OF THE COUNCIL

Decisions adopted by the Council in accordance with its authority in the matters to which the preceding articles of this chapter refer shall come into force in each Contracting State, no later than 30 days from the date of the Council's decision, merely by the issuance of a decision or decree of the executive authority or body.

CHAPTER VII. UNFAIR TRADE PRACTICES

Article 25. SOLE PROVISION

The Contracting States shall take such countervailing measures as may be necessary in respect of goods from outside the region to offset trade practices that are harmful or potentially harmful to Central American production, especially when the goods imported are priced below their normal value or have received export subsidies.

CHAPTER VIII. SAFEGUARD CLAUSE

Article 26. SOLE PROVISION

When a Contracting State is faced with a serious imbalance in its balance of payments, or sudden, widespread shortages of raw materials and basic finished goods, or market disruptions, or unfair trade practices, or any other situation which

threatens to become a national emergency, that State may, for a maximum of 30 days, unilaterally apply the measures provided for in chapter VI of this Convention with respect to the modification of import duties. Such action shall be without prejudice to the application of other, non-tariff measures which States may adopt on the basis of their national legislation.

Within the period specified, the Council shall meet to review the situation, determine its seriousness and arrange for the measures which should be adopted jointly, including the possibility of suspending or modifying the measures adopted unilaterally or, where appropriate, extending them. The period specified in the preceding paragraph shall be extended automatically until the Council takes the action it deems necessary.

The Council shall establish the regulations governing this provision.

CHAPTER IX. FINAL PROVISIONS

Article 27. RATIFICATION, DEPOSIT, ENTRY INTO FORCE AND DENUNCIATION

The present Convention shall be submitted for ratification in each State, in accordance with the respective constitutional or legislative procedures. The instruments of ratification shall be deposited with the General Secretariat of the Organization of Central American States.

In the case of the first three States to ratify it, the Convention shall enter into force eight days after the deposit of the third instrument of ratification and, in the case of those States ratifying it subsequently, on the date of deposit of the respective instrument of ratification. It shall be of ten years' duration, starting with the date of its entry into force, and it shall be renewed automatically for successive periods of ten years.

The present Convention may be denounced by any of the Contracting States once the initial term has expired. Such denunciation shall take effect, for the denouncing State, two years after receipt of the denunciation, and the Convention shall remain in force for the other Contracting States so long as at least three of them remain parties thereto.

The General Secretariat of the Organization of Central American States shall act as depositary of the present Convention and shall send a certified copy thereof to the Ministry of Foreign Affairs of each of the Contracting States and to the Permanent Secretariat of the General Treaty on Central American Economic Integration; and it shall notify them immediately of the deposit of each instrument of ratification and of any denunciation which may be made. Upon the entry into force of the Convention, it shall also transmit a certified copy thereof to the Secretariat of the United Nations for registration in accordance with the provisions of Article 102 of the Charter of the United Nations.

Article 28. PRECEDENCE

The present Convention shall take precedence over the provisions of regional agreements and national legislation which are in conflict with it.

CHAPTER X. TRANSITIONAL PROVISIONS

First transitional article. INTERIM REGIME

The customs duties provided for in the Central American Import Tariff shall be in effect from 1 January to 30 September 1985. The Central American Agreement on the Equalization of Import Duties and Charges and the Protocols thereto¹ shall cease to have effect from 1 October 1985.

The Contracting Parties shall apply the new Standard Central American Tariff Nomenclature (NAUCA II), with the current rates of customs duty expressed in *ad valorem* terms, by 1 July 1985 at the latest.

Chapter VI "Modification of import duties" shall govern the gradual incorporation in Annex "A" to this Convention of the new liberalization measures and rates of custom duty negotiated.

The Contracting States undertake to make every effort to negotiate and apply, by 1 July 1985 at the latest, the new duties on factors of production, raw materials and capital goods, to be incorporated in Annex "A" of the Tariff, in respect of which the provisions of the Second and Third Transitional Articles of this Convention shall enter into force on 1 July 1985.

The Council shall establish the timetable, procedures and subject matters to be negotiated in connection with Annex "A", to which the preceding paragraph refers.

Second transitional article. EXTENSION OF THE FOURTH PROTOCOL

The Fourth Protocol to the Central American Agreement on fiscal incentives to industrial development shall be extended in its entirety until 30 September 1985. The extension shall cover benefits accorded through classification or equalization. The tax benefits granted by the Central American Agreement on fiscal incentives to industrial development and the Protocols thereto, together with the exemptions from the economic stabilization tax granted to manufacturing enterprises, shall thus be renewed automatically until that date. This extension shall also apply to enterprises whose benefits are due to expire between 1 January 1985 and 30 September 1985.

The prohibition to which the first paragraph of article 21 and the Third Transitional Article refer shall take effect on 1 October 1985, or before in the case envisaged in the fourth paragraph of the First Transitional Article.

As regards the provisions of the Central American Agreement on fiscal incentives to industrial development and the Protocols thereto, the precedence to which article 28 refers shall take effect on 1 October 1985.

The dates specified in this Transitional Article shall be moved forward if the time limit established in the fourth paragraph of the First Transitional Article is observed.

¹United Nations, *Treaty Series*, vol. 454, p. 289; vol. 547, p. 340; vol. 773, pp. 158 and 196; and vol. 790, pp. 202, 288 and 306.

Third transitional article. REPEAL OF INSTRUMENTS
GRANTING EXEMPTIONS

As from 1 October 1985, any provisions relating to exemptions from import duties granted by decrees, agreements, resolutions or contracts and any guarantees that may have been given therewith shall be null and void.

Fourth transitional article. TIME LIMIT FOR ACCEPTING NEW REQUESTS
FOR EXEMPTIONS

As from 1 May 1985, no further requests for exemptions from import duties as provided for in the Central American Agreement on fiscal incentives to industrial development and the Protocols thereto or in national industrial development laws shall be accepted.

Fifth transitional article. GOODS IN TRANSIT AND TIME LIMIT
FOR THE UTILIZATION OF CONCESSIONS

Goods shipped before 1 October 1985 and, at the time of shipping, eligible for exemption from import duties as provided for in the Central American Agreement on fiscal incentives to industrial development or in national industrial development laws shall be imported under the terms of those provisions.

Exemptions from duties granted but not utilized by the beneficiary on the date of entry into force of this Convention shall have a period of 60 calendar days within which to be utilized; the goods must be shipped within that time-frame in order to be in conformity with the first paragraph of the present article.

Sixth transitional article. REINVESTMENT OF PROFITS

As from 1 October 1985, article 9 of the Central American Agreement on fiscal incentives to industrial development shall be terminated and each State may enact the legislation it sees fit.

Seventh transitional article. COMMITMENT TO ADOPT
A NEW UNIFORM CUSTOMS CODE

For the purposes of article 3 (c) of this Convention, those countries not applying the Central American Uniform Customs Code and the Regulations thereto (CAUCA and RECAUCA) shall apply their respective national legislation.

The Contracting States shall agree multilaterally on a new Central American Uniform Customs Code and Regulations before 1 October 1985.

Eighth transitional article. AUTHORITY TO IMPLEMENT
THE NEW REGIME AT THE NATIONAL LEVEL

Upon ratification of the present Convention by each State, the terms of the Fourth Protocol to the Central American Agreement on fiscal incentives to industrial development shall be deemed to be extended nationally.

Ninth transitional article. SIGNATURE AND ACCESSION

The present Convention shall remain open for signature before its entry into force and for accession after its entry into force by any Central American State which is not an original signatory. In cases of accession, the Council may establish special rules, modalities and time limits for reaching the import duty levels which shall be contained in Annex "A" to this Convention.

Therefore

The Governments which have decided to sign the present Convention on the Central American Tariff and Customs Regime have designated as their plenipotentiaries:

His Excellency the President of the Republic of El Salvador: Mr. Ricardo González Camacho, Minister of Economic Affairs;

His Excellency the President of the Republic of Costa Rica: Mr. Odalier Villalobos González, Minister of Economic Affairs and Trade, and as witness Mr. Elías Shadid Lépez, Minister and External Tariff Negotiator.

Who hereby sign the Convention at SIECA headquarters on 14 December 1984.

RICARDO GONZÁLEZ CAMACHO
Minister of Economic Affairs
of El Salvador

ODALIER VILLALOBOS GONZÁLEZ
Minister of Economic Affairs
and Trade of Costa Rica

Witness:

ELÍAS SHADID LÉPIZ
Minister and External Tariff Negotiator
of Costa Rica

His Excellency the Head of State of the Republic of Guatemala: Mr. Leonel Hernández Cardona, who hereby signs the Convention at SIECA headquarters on 27 December 1984.

LEONEL HERNÁNDEZ CARDONA
Minister of Economic Affairs

The Honourable Government Junta of National Reconstruction of the Republic of Nicaragua: Mr. Ernesto José Cordero Sánchez, who hereby signs the Convention at SIECA headquarters on 27 December 1984.

ERNESTO JOSÉ CORDERO SÁNCHEZ
Interim Negotiator for Nicaragua

CENTRAL AMERICAN LEGISLATION ON THE CUSTOMS VALUE OF GOODS,¹ ANNEX “B” TO THE CONVENTION ON THE CENTRAL AMERICAN TARIFF AND CUSTOMS REGIME²

The Governments of the Republics of Guatemala, El Salvador, Nicaragua and Costa Rica,

Convinced that the economic integration process is an effective instrument for promoting the economic and social development of the countries of Central America, and that all sectors of the population should share in its benefits;

Bearing in mind that there is broad consensus in the countries of Central America regarding the need to adjust and direct the economic integration process with a view to making it a genuine instrument and factor for the economic development of the region;

Aware that economic and social conditions in Central America have undergone profound changes and that Central American countries require a new system in order to be able to adapt in a flexible and timely way to changing circumstances;

Therefore have decided to sign the present agreement, which shall be called “Central American Legislation on the Customs Value of Goods, Annex “B” to the Convention on the Central American Tariff and Customs Regime”,² for which purpose they have designated as their plenipotentiaries:

His Excellency the Head of State of the Republic of Guatemala: Mr. Ariel Rivera Irías, Minister of Economic Affairs;

His Excellency the President of the Republic of Costa Rica: Mr. Odalier Villalobos González, Minister of Economic Affairs and Trade;

His Excellency the President of the Republic of Nicaragua: Mr. Alejandro E. Martínez Cuenca, Minister of Foreign Trade;

His Excellency the President of the Republic of El Salvador: Mr. Ricardo González Camacho, Minister of Economic Affairs;

who, having exchanged their full powers, found in good and due form, have agreed as follows:

¹ Came into force in respect of each of the following States, on the date of deposit with the General Secretariat of the Organization of Central American States of its instrument of ratification, in accordance with article 28:

<i>Participant</i>	<i>Date of deposit of the instrument of ratification</i>
Nicaragua	12 September 1985
(With effect from 18 September 1985, the date of entry into force of the 1984 Convention.)	
Costa Rica	21 December 1985
El Salvador	14 January 1986
Guatemala	9 August 1991

² See p. 367 of this volume.

ANNEX “B”. CENTRAL AMERICAN LEGISLATION
ON THE CUSTOM VALUE OF GOODS

CHAPTER I. NORMAL PRICE

Article 1

For the purposes of the application of the *ad valorem* customs duties contained in the Central American Import Tariff, the customs value of imported goods shall be their normal price.

Normal price means the price which, at the time of acceptance of the import document, could reasonably be asked for the imported goods in an arm's length transaction between an unrelated buyer and seller.

Article 2

In determining the normal price it shall be assumed that:

(a) The goods are delivered to the buyer at the port or place of entry into the territory of the importing country;

(b) The seller pays all costs relating to the sale and the delivery of the goods to the port or place of entry into the territory of the importing country, and those costs are therefore included in the normal price; and,

(c) The buyer pays the duties and charges payable in the importing country, and those duties and charges are therefore excluded from the normal price.

Article 3

The costs referred to in article 2 (b) include in particular:

(a) Transportation costs;

(b) Insurance costs;

(c) Commissions and/or brokerage fees;

(ch) The cost of obtaining, outside the importing country, the documents pertaining to the entry of the goods into that country, including consular fees or charges;

(d) Duties and charges payable outside the importing country, except those for which relief has been granted or which have been or will be reimbursed;

(e) The cost of containers and packing materials, unless such containers and materials are subject to their own tariff treatment and the same customs procedure;

(f) The cost of packing;

(g) Loading and stowing charges; and charges for removal from stowage and for unloading.

When, because of the nature of the importation, the consignee or importer is unable to produce proof of the expenses incurred for transport and insurance, it shall be the responsibility of the Customs Administration to estimate those expenses in accordance with the Regulations for this Legislation.

Article 4

Provided that the sale is made in good faith, the price paid or payable which appears in the invoice or the relevant documents shall be considered indicative of

the normal price, without prejudice to any adjustments to that price deemed necessary because of elements which in the sale in question differ from those in the definition of the value referred to in this Legislation.

The Customs Administration of each Contracting State shall take the requisite steps to ensure that customs duties are not evaded by means of fictitious or false pricing on contracts.

Article 5

When, pursuant to the provisions of the present Legislation, it is necessary to convert foreign currencies, article 20 of the Convention on the Central American Tariff and Customs Regime shall apply.

CHAPTER II. FACTORS DETERMINING THE NORMAL PRICE

Article 6

The factors which determine the normal price are:

1. *The price*

The price paid or payable shall be the basis for determining the normal price of the goods, provided that:

(a) The time which elapses between the date of the invoice and the date of acceptance of the import document does not exceed the limit established in the Regulations for this Legislation; and,

(b) At the time of its determination the price corresponds to the prices which would be obtained for the goods in an arm's length transaction. The costs listed in article 3 of this Legislation should be added to that price.

2. *The time*

The time to be taken into account for the valuation of the goods shall be the time of acceptance of the import document.

3. *The place*

The place shall be understood as meaning the port or place of entry of the goods into the territory of the importing country. Should entry be via a port in a Central American country other than the importing country, the port or place of entry shall be as stated in the latter's legislation.

4. *Quantity*

In determining the normal price it shall be assumed that the contract is restricted to the quantity of goods to be valued, due account being taken of the commercial circumstances surrounding the sale.

CHAPTER III. ARM'S LENGTH TRANSACTION

Article 7

For the purposes of this Legislation, an arm's length transaction between an unrelated buyer and seller shall be one in which the following requirements are met:

(a) Payment of the price of the goods shall be the sole consideration of the buyer;

(b) The price shall not be influenced by any commercial, financial or other relations, whether or not contractual, except for those arising out of the contract in question between the seller, or a natural or legal person associated in business with the seller, and the buyer, or a natural or legal person associated in business with the buyer;

(c) No part of the proceeds of any subsequent resale or other act of disposal or use of the goods shall accrue directly or indirectly to the seller or any other physical or legal person associated in business with him; and,

(ch) Any further conditions which the Council may establish.

The Council shall draw up regulations for this article.

CHAPTER IV. PATENTS AND TRADE MARKS

Article 8

If the goods to be valued have been manufactured under patent or in accordance with a protected design or model, the normal price shall be understood to include the value of any royalties and licence fees pertaining to the goods in question.

Article 9

When the goods to be valued bear a foreign trade mark, the normal price of those goods shall include the value of the licence for use of that foreign trade mark.

Article 10

The normal price of imported goods which, after undergoing additional processing in the importing country, are the object of a sale or other act of disposal with a foreign trade mark, or of use with such a mark, shall be determined in accordance with the Regulations for this Legislation.

Article 11

Articles 8, 9 and 10 above shall be applied without prejudice to the provisions of articles 1 and 7 of this Legislation.

Article 12

For the purposes of this Legislation, a trade mark shall be considered to be foreign if it belongs to:

(a) A person who has grown, manufactured or sold goods bearing such a mark outside the importing country; or,

(b) A person associated in business with a person described in (a) above; and,

(c) A person whose rights with respect to the trade mark are limited by the provisions of an agreement with one of the persons mentioned in (a) or (b) above.

CHAPTER V. DETERMINING THE NORMAL PRICE

Article 13

The normal price shall be determined on the basis of the price paid or payable, together with any necessary changes or adjustments when that price is different

from the normal market price. If this is not possible, the normal price shall be determined on the basis of the following criteria, which are listed by order of elimination:

1. Normal market price;
2. Probably selling price;
3. Actual selling price; and,
4. Price determined on the basis of the leasing agreement or agreements.

The Regulations for this Legislation shall establish any adjustments which may have to be made to earlier prices when elements of the sale in question differ from those contained in articles 1, 2 and 3 of this Legislation.

Article 14

For the purposes of article 13 above:

1. Price paid or payable means the price which the buyer and the seller have agreed upon and which appears in the invoice or contract.
2. Normal market price means the price customarily charged in arm's length transactions, in similar circumstances, for goods identical or similar to those being valued.
3. Probable selling price means the price charged for goods identical or similar to those being imported in earlier sales made in the national territory in similar circumstances within the past 90 days.
4. Actual selling price means the price charged for the goods themselves in sales made in the national territory for the first time.
5. Price determined on the basis of the leasing agreement or agreements means the price established on the basis of leases set forth in agreements governing the use and enjoyment of goods during the normal period of use of the imported goods, after the deduction of elements extraneous to the concept of normal price, such as legal interest charges during the stated period and technical assistance.

Article 15

The normal price of damaged or used goods and other special cases shall be determined in accordance with the Regulations for this Legislation.

CHAPTER VI. DOCUMENTS REQUIRED

Article 16

The consignee or importer, as the case may be, shall declare the customs value of the goods to the respective Customs Administration, in accordance with the above provisions. The document in which that value must be indicated shall be called the "customs value declaration", and its format, form and content, together with any exceptions, shall be established in the Regulations for this Legislation.

Article 17

The consignee or importer, as the case may be, shall be required to provide to the respective Customs Administration any document or additional information deemed necessary for verification of the customs value, in accordance with the Regulations for this Legislation.

CHAPTER VII. VERIFICATION AND INVESTIGATION
OF THE CUSTOMS VALUE

Article 18

The Customs Administration of each Contracting State shall be responsible for verifying and, where appropriate, investigating the declared customs value and shall make the necessary adjustments and rectifications when that value is found to differ from the normal price. It shall keep records for this purpose, the organization and maintenance of which shall be governed by the Regulations for this Legislation, and it shall arrange inspections and audits as necessary.

Article 19

Investigation and verification of the declared customs value, together with rectifications and adjustments to that value where required, may be undertaken even after the customs duties have been paid, provided that the process is carried out during the 90 days following the payment of the duties.

The Customs Administration shall notify the importer of the obligation to pay any unpaid duties within the same 90 days.

Article 20

If formerly unknown facts or circumstances are discovered which reveal fraud, concealment or bad faith on the part of the importer owing to the submission of inaccurate, incomplete or false declarations or documents or to some other action resulting in the underpayment of tax, the verification and investigation of the customs value referred to in article 18 above shall be carried out even after the customs duties have been paid, within the period established by national legislation, to begin on the date on which such payment was made. In such cases, the procedures provided for in national customs and tax fraud legislation shall be followed. The importer shall not be required to leave samples of the goods for the above purposes.

CHAPTER VIII. VIOLATIONS AND PENALTIES

Article 21

Errors in the customs value declaration, which are to be determined in accordance with article 19 above, shall, in the case of underpayment of tax, carry a penalty of a fine payable in national currency, in an amount equivalent to no less than five and no more than one hundred Central American pesos, depending on the magnitude of the error.

Article 22

Misinformation in the customs value declaration, which is to be determined in accordance with article 20 above, shall, where appropriate, carry the penalties provided for in the legislation of the country concerned.

CHAPTER IX. NATIONAL CUSTOMS VALUATION COMMITTEE

Article 23

Each Contracting State shall set up a National Customs Valuation Committee which shall have the ultimate administrative authority to hear and adjudicate com-

plaints or appeals relating to customs valuation. The Regulations shall establish the procedures by which the Committee shall be governed.

Article 24

The Committee shall consist of five members, three of whom shall represent the public sector. The representative of the Ministry of Finance shall preside. The Committee shall take its decisions by a majority of all its members.

CHAPTER X. COMPLAINTS AND APPEALS

Article 25

Complaints and appeals relating to customs valuation shall, in the administrative system, be governed by the provisions of this chapter and, where applicable, shall be dealt with as prescribed by the relevant legislation.

Where appropriate under national legislation, appeals against decisions on adjustments and rectifications made pursuant to articles 19 and 20 of this Legislation shall be submitted to the Director of Customs within thirty working days of the respective notification. The Director of Customs shall give a ruling within the next thirty working days. Should he fail to do so, the appeal shall be considered rejected and the party in question may seek redress from the body established pursuant to article 23.

The appeal to the National Customs Valuation Committee shall be submitted, through the Director of Customs, within ten working days of the respective notification or of the expiry of the period specified for a ruling by the Director of Customs.

The Committee shall rule on the appeal within 60 calendar days of receiving the administrative file.

Right of recourse against the decisions of the National Customs Valuation Committee shall be as provided for in the national legislation.

CHAPTER XI. FINAL PROVISIONS

Article 26

The concept of normal price established by this Legislation shall be used to determine the customs value of all imported or cleared goods including goods exempt from customs duties, goods not liable by virtue of special laws and goods subject to specific duties.

In the case of clearances within Central America, this Legislation shall not under any circumstance be used to obstruct trade.

Article 27

The Council shall issue the Regulations for this Legislation.

Article 28

Ratification, deposit, entry into force and denunciation. The present Annex "B" is an integral part of the Convention on the Central American Tariff and Customs Regime and shall be submitted for ratification in each State in accordance with the respective constitutional or legislative procedures. The instruments of ratification shall be deposited with the General Secretariat of the Organization of Central

American States. In the case of the countries where the Convention on the Central American Tariff and Customs Regime is already in force, Annex “B” shall enter into force upon the deposit of the instrument of ratification. It shall be of the same duration as the Convention and shall be extended in the same manner and for the same periods as the Convention.

Denunciation of Annex “B” shall be contingent upon denunciation of the Convention on the Central American Tariff and Customs Regime and, if applicable, shall be effected in accordance with the third paragraph of article 27 of that Convention.

The General Secretariat of the Organization of Central American States shall act as depositary of the present Annex and shall send a certified copy thereof to the Ministry of Foreign Affairs of each of the Contracting States and to the Permanent Secretariat of the General Treaty on Central American Economic Integration; and it shall notify them immediately of the deposit of each instrument of ratification and of any denunciation which may be made. Upon the deposit of each instrument, it shall transmit a certified copy thereof to the Secretariat of the United Nations for registration in accordance with the provisions of Article 102 of the Charter of the United Nations.

Article 29

TRANSITIONAL PROVISIONS

First Transitional Article

Import declarations already accepted at the time the present Legislation enters into force shall be dealt with in accordance with the customs rules under which they were issued.

Second Transitional Article

Provided that no new regional customs legislation is adopted, complaints and appeals referred to in article 25 of this Annex shall be governed by the provisions of Chapter XXXIII of the Central American Uniform Customs Code (CAUCA) and section 12 of its Regulations (RECAUCA). Countries not parties to CAUCA and RECAUCA shall apply their own national legislation.

At the headquarters of the Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA), at Guatemala City on 7 June 1985.

For the Government of Guatemala:

ARIEL RIVERA IRÍAS
Minister of Economic Affairs

For the Government of Costa Rica:

ODALIER VILLALOBOS GONZÁLEZ
Minister of Economic Affairs and Trade

For the Government of Nicaragua:

ALEJANDRO E. MARTÍNEZ CUENCA
Minister of Foreign Trade

At the headquarters of SIECA on 8 June 1985.

For the Government of El Salvador:

RICARDO GONZÁLEZ CAMACHO
Minister of Economic Affairs

REGULATIONS FOR THE CENTRAL AMERICAN LEGISLATION
ON THE CUSTOMS VALUE OF GOODS

SECOND MEETING OF THE CENTRAL AMERICAN TARIFF AND CUSTOMS COUNCIL
GUATEMALA CITY, GUATEMALA

5 December 1985

RESOLUTION No. 5 (COUNCIL-II -85)

APPROVAL OF THE REGULATIONS FOR THE CENTRAL AMERICAN LEGISLATION ON
THE CUSTOMS VALUE OF GOODS, ANNEX “B” TO THE CONVENTION ON THE
CENTRAL AMERICAN TARIFF AND CUSTOMS REGIME

The Central American Tariff and Customs Council,

Having considered the Convention of the Central American Tariff and Customs
Regime and the Central American Legislation on the Customs Value of Goods con-
tained in Annex “B”,

Whereas the agreement entitled “Central American Legislation on the Customs
Value of Goods”, Annex “B” to the Convention on the Central American Tariff and
Customs Regime, was signed at the headquarters of the Permanent Secretariat of the
General Treaty on Central American Economic Integration (SIECA) by the Repub-
lics of Guatemala, Nicaragua and Costa Rica on 7 June 1985 and by the Republic of
El Salvador on 8 June 1985;

Resolution No. 4 (COUNCIL-I-85) of the first meeting of the Central American
Tariff and Customs Council, Managua, Nicaragua, of 17 September 1985, provides
that the countries for which Annex “B”, the Central American Legislation on the
Customs Value of Goods, has entered into force, shall, if they consider it desirable,
apply, at the national level, the draft Regulations drawn up by SIECA with such
adjustments as they deem necessary, pending multilateral approval of the Regula-
tions by the Council.

Therefore in exercise of the powers conferred upon it by articles 7, 9 and 12 (a)
of that Convention.

Resolves to approve the following:

REGULATIONS FOR THE CENTRAL AMERICAN LEGISLATION ON THE CUSTOMS VALUE OF GOODS, ANNEX “B” TO THE CONVENTION ON THE CENTRAL AMERICAN TARIFF AND CUSTOMS REGIME

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CHAPTER I. GENERAL PROVISIONS AND DEFINITIONS

Article 1. These Regulations establish the necessary rules for the implementation of the Central American Legislation on the Customs Value of Goods, Annex “B” to the Convention on the Central American Tariff and Customs Regime.

Article 2. The following abbreviations used in the text of these regulations have the following meanings:

(a) The Convention: The Convention on the Central American Tariff and Customs Regime;

(b) The Legislation: The Central American Legislation on the Customs Value of Goods;

(c) The Council: The Central American Tariff and Customs Council;

(ch) SIECA: The Permanent Secretariat of the General Treaty on Central American Economic Integration.

CHAPTER II. FACTORS DETERMINING THE NORMAL PRICE

Article 3. For the purposes of article 6, paragraph 1 (a), the price paid or payable shall be the basis for determining the normal price of the goods, provided that the time which elapses between the date of the invoice and the date of acceptance of the import document does not exceed 180 calendar days. The Custom Authority may extend that period in the case of goods sold with a specific delivery time exceeding 180 days, or in case of *force majeure* or in the case of a duly substantiated fortuitous event.

Normal variations in the market price of goods occurring within the periods mentioned in the preceding paragraph shall not be taken into account in determining the normal price.

Article 4. For the purposes of article 6, paragraph 4, of the Legislation, and for the purposes of quantity discounts, goods whose delivery is phased over the 360 calendar days following the date of invoicing of the first consignment shall be considered as components of a single quantity purchased.

The Customs Administration shall identify and adjudicate special cases in which goods, by their very nature, cannot be imported within the period indicated in the preceding paragraph.

For the implementation of this article, the consignee must prove to the Customs Administration that the quantity submitted for valuation forms part of a larger quantity. In the event that not all the goods are imported within the said period, the Customs Administration shall make the appropriate adjustments.

CHAPTER III. ARM'S LENGTH TRANSACTION

Article 5. For the purpose of article 7 (a) of the Legislation, the buyer shall be regarded as paying considerations additional to the purchase price where he performs services and incurs expenses in the national territory which, in arm's length transaction, would be charged to the foreign seller. Such services and expenses shall include the following:

- (a) Study and survey of the domestic market;
- (b) Advertising of the brand name under which the goods are sold;
- (c) Maintenance of showrooms;
- (d) Participation in fairs and exhibitions;
- (e) Cost-free services to underwrite the manufacturer's guarantee; and
- (f) Any other expenditure for the benefit of the seller.

Article 6. The price paid or payable shall be adjusted where it does not correspond to a sale made as an arm's length transaction because of the existence of the linkages mentioned in chapter III of the Legislation in the case of imports made by:

- (a) Distribution agencies;
- (b) Consignment agencies;
- (c) Commercial agencies;
- (ch) Exclusive dealers or distributors;
- (d) Associated firms without commercial independence;
- (e) Commercially independent associated firms; and
- (f) Firms with a manufacturing licence.

Article 7. For the purposes of implementing the preceding article:

(a) "Distribution agencies" means natural or legal persons that represent the seller in the country and are assumed to receive a commission even where the amount of such commission is not specified in the price invoiced by the seller.

The intervention of the agent as accepting consignee shall not be taken as indicating the existence of a commercial level distinct from that of the national buyer.

(b) “Consignment agencies” means agencies that represent a foreign seller and are assumed to receive a commission for importing goods and keeping them in storage pending their sale for and at the risk of such seller;

(c) “Commercial agencies” means agencies that represent a foreign seller in the import and sale of goods acquired at a fixed price and sold on own account, whereby the seller bears the expenses and risks of the operation and, in addition, enjoys other benefits such as payment by instalments, discounts or special bonuses. Apart from the costs and services for which an independent buyer would assume responsibility in reselling the imported goods, such agencies incur other costs and provide other services that would be the responsibility of the foreign seller if the latter were to sell directly in the importing country under the conditions of an arm’s length transaction;

(ch) “Exclusive dealers or distributors” means dealers or distributors that secure from foreign sellers the right to sell the goods acquired on their own behalf and on an exclusive basis, within the national territory or in a part thereof. The expenditures incurred and the services performed by buyers on behalf of the seller form part of the customs value of the goods;

(d) “Associated firms without commercial independence” means firms that have a financial linkage with one or more enterprises whose invoices are merely internal book entries for the transfer of goods from one section to another within a given enterprise;

(e) “Commercially independent associated firms” means firms that buy and sell on their own account and at their own risk but have a commercial, financial or other linkage with the seller abroad. They include associations for the distribution of profits arising from the resale of goods;

(f) “Firms with a manufacturing licence” means firms that have concluded agreements with foreign firms entraining the obligation to pay in order to produce specific goods in the national territory in accordance with their procedures, using patents, designs, protected models or their foreign trade marks.

CHAPTER IV. DETERMINING THE NORMAL PRICE

Subchapter I. On the basis of the price paid or payable

Article 8. The price paid or payable shall be accepted as the normal price or assessment basis provided that it corresponds to a sale meeting the following requirements.

- (a) It complies with the provisions of article 1 to 12 of the Legislation; and
- (b) It complies with the provisions of articles 3 and 4 of these Regulations.

Article 9. When the price paid or payable does not meet the requirements of the preceding article, it shall be inadmissible as representing the assessment basis. However, it may be taken as the starting-point in determining the normal price of the goods, provided that they meet the conditions set forth in the first paragraph of article 4 of the Legislation.

Article 10. When the price paid or payable does not include the cost of any of the expenses enumerated in article 3 of the Legislation, or other costs inherent in the sale and delivery of the goods, the price paid or payable shall be adjusted by an amount equivalent to the expenses excluded, even where they have been incurred by the importer. In general, the expenses to be added are:

(a) Transport costs. If the goods are transported in vehicles belonging to the consignee, the corresponding costs shall be added, using the rates that would be applied by the consignee to third parties, if such consignee were the carrier. Otherwise, the usual rate for the route in question shall be applied;

(b) Insurance costs. When the goods have not been insured by the seller or by the buyer, the latter assumes the function of insurer for his own goods; accordingly, the Customs Administration shall estimate the theoretical amount of the insurance costs on the basis of the usual premiums charged according to the nature of the goods being imported;

(c) Costs of warehousing, handling and transshipment, including laydays paid or payable for delay in loading, provided such costs have not been included in the price;

(ch) Costs connected with obtaining abroad the documents necessary for import of the goods, including consular fees or charges, export duties, forwarding charges in the exporting country, or other charges payable in respect of the merchandise, except those taxes from which the goods have been exempted or which have been or will be reimbursed;

(d) Costs connected with the taking of samples and surveys and the examination, analysis and testing of the goods carried out abroad, even where such costs are charged to the buyer and are provided for in the buying agreement or are necessary in order to perform the agreement;

(e) The commissions on purchase or sale, brokerage fees or considerations payable to any person involved in the transactions, irrespective of their denomination and form of payment, even when they are paid in the form of wages or as a form of remuneration; and

(f) The cost of containers and packing materials, both internal and external, when they are subject to the tariff regime of the goods, and the cost of the operations and materials necessary for packing.

Article 11. When the containers or packing materials have their own tariff regime and the charge for them is included in the price paid or payable, such charge shall be separated out for purposes of their valuation. In all cases in which containers and packing materials containing goods are imported temporarily, the cost of leasing such containers and packing materials, or equivalent costs, shall be aggregated, together with the appropriate transport and insurance costs for the import, if such costs are not included in the price paid or payable.

Similarly, in the case of the reimportation of national or nationalized containers and packing materials containing goods, their transport and insurance costs in respect of the import shall be added.

Article 12. When costs not forming part of the normal price are included in the price paid or payable, such costs shall be deducted even where they have been borne by the supplier, such as:

(a) Payable import taxes and charges, customs clearance charges, taxes and other charges payable subsequent to the entry of the goods;

(b) Costs connected with the assembly of the imported materials in the national territory;

(c) Costs of technical assistance relative to the current utilization or the maintenance of the imported goods;

(ch) Bank charges, financing charges in the importing country and interest on deferred payment.

Article 13. Discounts or price reductions that are general in nature and have actually been granted in any of the following circumstances shall be admissible and shall be deducted from the price paid or payable, where that has not already been done:

(a) *For quantity.* Provided that the following requirements are met:

- (i) That the delivery period for the totality of the goods imported in phased consignments does not exceed the 360 calendar days following the date of invoicing of the first consignment;
- (ii) That the total quantity included in the sale is delivery in the country of importation and is consigned to the same buyer; and
- (iii) That the sale is not retroactive in nature, in other words, that sums in respect of earlier consignments are not deducted;

(b) *For cash payment.* When cash payment is customary in the line of business involved;

(c) *For guarantee.* In order to compensate for possible deterioration of the goods during carriage, or for manufacturing defects, if they take the form of a mark-down in the price or of the dispatch in the same shipment of an additional quantity of goods equivalent to the customary discount in the line of business involved.

Article 14. All discounts not meeting the requirements of these Regulations, particularly those of a special or abnormal nature, such as the following, shall be regarded as inadmissible:

(a) Discounts granted in respect of commercial or financial linkages;

(b) Circumstantial discounts, such as those for “market introduction” and the “competition discount”;

(c) Discount on samples;

(ch) Discounts for advance payment;

(d) Quantity discounts, where none of the requirements set forth in article 13, subparagraph (a), of these Regulations are met;

(e) Discounts for a delay in the delivery period;

(f) Discounts to compensate for defects in earlier shipments.

Subchapter II. On the basis of the normal market price

Article 15. When the customs value cannot be determined on the basis of the price paid or payable, the normal market price shall be used, for which purpose comparisons of the price element shall be made in accordance with the provisions

of these Regulations. The price thus obtained shall be adjusted as appropriate in order to make it compatible with the concept of the normal price.

Article 16. The normal market price shall be determined taking as a reference, and in order of precedence, the price of:

(a) Identical goods from the same seller for one or more other buyers in the same country;

(b) Identical goods from other sellers in the same country;

(c) Similar goods from the same or other sellers in the same country;

(ch) Identical goods from other sellers in other countries; and

(d) Similar goods from other sellers in another country.

The criteria set forth in subparagraphs (ch) and (d) shall be applied, in confidence, to exceptional cases, particularly those in which the utilization of fictitious or false pricing or contracts is proved.

In all the comparisons indicated, the circumstances of time, quantity and the commercial level of the seller shall be taken into account.

Article 17. For the purposes of the implementation of the preceding article, identical goods shall be taken as meaning goods equivalent in all respects to the goods being valued, and particularly with respect to their quality, trade brand and commercial prestige; similar goods shall be taken to mean goods which, without being equivalent in all respects to the goods being valued, have characteristics that resemble those of such goods, particularly with respect to type and quality.

Subchapter III. On the basis of the probable or actual selling price

Article 18. When the probable or actual selling or resale price of the goods is taken as a basis, elements extraneous to the concept of the normal price included therein, such as customs duties and other taxes and charges payable in the national territory, the gross commercial profit that is customary in the line of business involved, the shipping costs, and in general, all costs incurred subsequent to the entry of the goods, shall be deducted from such price.

The gross commercial profit customary in the line of business involved shall only be deducted when the importer is independent of the foreign seller or, if there is a linkage between them, when he is commercially independent.

Subchapter IV. On the basis of leasing costs

Article 19. When the goods to be valued have been imported under a contract that does not provide for a transfer of ownership, or when they are to be the subject of such a contract after they have been imported, the normal price shall be determined on the basis of the price of identical or similar goods, if known, or, if such is not the case, as a function of the leasing costs specified in the said contract.

Article 20. For the purposes of the preceding article, the normal price shall be represented by the cash value, at the time of valuation, of total leasing costs during the normal period of utilization of the goods, established on the basis of the period specified in the actual leasing contract or of the period known to be applicable to identical or similar goods, subject to deduction of those elements extraneous to the normal price that may be contained in the total leasing costs.

CHAPTER V. TRANSACTIONS THAT DO NOT CORRESPOND TO AN ARM'S LENGTH TRANSACTION ON ACCOUNT OF LINKAGES BETWEEN THE BUYER AND THE SELLER

Article 21. In the case of agencies or of exclusive dealers or distributors, the price paid or payable shall be adjusted in accordance with the following procedures:

(a) For distribution agencies, the customs value shall be established on the basis of the price paid or payable by the clients of such agencies, taking into consideration that:

- (i) When the agency presents the goods of shipment, the amount of the commission shall be added to the price invoiced by the foreign provider, if the amount of such commission is known and is not included in the said price; or
- (ii) If the commission is not known, elements extraneous to the normal price — such as import duties and domestic charges, shipment costs and, in general, all elements arising subsequent to importation — that may be included in the price invoiced by the agency to the national buyer (the price paid or payable) shall be deducted;

(b) For consignment agencies, the customs value may be established on the basis of the probable or actual selling price, bearing in mind the provisions of article 18 of these Regulations;

(c) For commercial agencies or exclusive distributors, the customs value shall be established by applying in the criterion of the price paid or payable taking into consideration that, when a price reduction is granted by the foreign seller in favour of commercial agencies, or exclusive dealers or distributors, and is of an abnormal amount in terms of what is customary in the line of business involved, the price paid or payable shall be adjusted by the corresponding amount.

Article 22. In the case of associated firms without commercial independence, the customs value shall be determined as indicated in chapter IV of these Regulations.

Article 23. To determine the customs value in the case of importation by commercially independent associated firms, the factual elements of the transactions shall be taken into account in order to put them on the same footing as transactions performed either on an arm's length basis or in any of the linkage situations referred to in article 7 of these Regulations, the appropriate adjustment being determined on a case-by-case basis.

Article 24. In the case of firms with a licence to manufacture under foreign trade marks, the provisions of chapter IV of the Legislation and of the following articles shall apply.

Article 25. The value of the right to use a foreign trade mark shall be aggregated in its entirety with the normal price of the goods to be valued unless such goods, subsequent to their importation, are subject to one or more of the following operations:

(a) Simple operations such as placement of the trade mark, splitting, selection or packing; and

(b) Operations which do not contribute at all, or contribute only minimally, to giving the essential characteristics or properties of the goods to which the trade mark will apply.

Article 26. Provided the provisions of subparagraphs (a) and (b) of the preceding article are not applicable, the value of the right to use a foreign trademark shall be excluded in its entirety from the normal price of the goods to be value when:

(a) The imported goods are off-the-shelf items which may be obtained in an arms-length transaction; or

(b) The conditions for assignment of the trade mark to be met by the article produced depend on processing subsequent to importation;

(c) The imported goods may be regarded as constituting an insignificant element of the product to which the foreign trade mark will be applied.

Article 27. Where the provisions of the preceding articles are not applicable, the value of the right to use a foreign trade mark shall be included in the normal price of the goods to be valued, except for the part attributable to operations subsequent to importation.

CHAPTER VI. SPECIAL CASES OF VALUATION

Subchapter I. Determining the normal price of damaged goods

Article 28. New imported goods that are presented for shipment in a damaged condition shall be valued on the basis of their condition at the time when they are submitted for valuation or revaluation.

Article 29. For the determination of the customs value of the damaged goods, the normal price of the new goods in good condition shall be established and that price shall be reduced by the percentage corresponding to the damage in accordance with the relevant rules in each Signatory State.

Article 30. In the case of damage arising subsequent to the time indicated in article 28 of these Regulations the procedures shall be applied in accordance with the provisions contained in CAUCA and its Regulations relating to customs claims or, failing that, with the relevant national provisions.

Subchapter II. Determining the normal price of used goods

Article 31. Imported goods that have been used shall be valued in accordance with their condition at the time of valuation.

Article 32. For the determination of the customs value of the used goods, the normal price of the goods when new and in good condition shall be established and shall be reduced by the percentage corresponding to the wear and tear in accordance with the relevant standards in each Signatory State.

Subchapter III. Determining the normal price of reimported goods that have been modified or repaired abroad

Article 33. The following shall be taken into consideration in determining the normal price of reimported goods that have been repaired abroad:

(a) The original cost or value of all the goods involved in the repair operations, including charges for delivery abroad;

(b) The cost of labour for the repair;

(c) The amount of the emoluments of the person carrying out the work and, where applicable, the commissions paid or to be paid to intermediaries; and

(d) The costs of packing, carriage and insurance arising in connection with the reimportation and, in general, all charges paid to ensure the delivery of the repaired goods to the consignee at the port or place of reimportation. Where the reimported goods have been repaired within the seller's original guarantee period and no sum is payable in that connection, the normal price shall be determined by considering exclusively the costs and charges not covered by the guarantee.

Article 34. The determination of the normal price of reimported goods that have been modified abroad shall be subject to the provisions of domestic legislation.

*Subchapter IV. Determining the normal price
of temporarily imported goods*

Article 35. The normal price of temporarily imported goods shall be determined on the basis of the declared value, which shall be stated by the importer.

If the Customs Administration disagrees with the declared value, the relevant provisions of these Regulations shall apply.

*Subchapter V. Determining the normal price of goods presented
for shipment on leaving the bonded area*

Article 36. The normal price of goods that have remained in the bonded area without undergoing any modification and that have been presented for shipment for consumption in the national territory shall be the price that would apply if the goods had arrived from abroad at that time and were subject to the provisions of the Legislation and of these Regulations.

Article 37. For goods that have been modified or submitted for modification in a bonded area, the normal price shall be determined in accordance with the provisions established for such cases in the legislation of each signatory country.

CHAPTER VII. DOCUMENTS REQUIRED

Article 38. Every consignee shall submit to the Customs Administration a "custom value declaration" in respect of the goods, indicating the normal price of the goods calculated in accordance with the provisions of the Legislation and of these Regulations. The declaration shall constitute one of the background documents establishing the customs value of the goods and it shall therefore record, under oath, the transactions, items and data required in the form attached to these Regulations. The Customs Administration or each Contracting State shall specify such exceptions as it considers relevant in the presentation of the customs value declaration.

Article 39. The customs value declaration shall be signed by the consignee or imported of the goods or, as appropriate, by his legal representative, in the number of copies required by the Customs Administration concerned.

Article 40. In determining the customs value of the goods, the Customs Administration may require the consignee to submit such additional documentation or information as it considers necessary. The consignee shall submit such additional documentation or information within a period of 60 calendar days.

Where the time limit is not met, the Customs Administration shall determine the value on the basis of the elements available.

CHAPTER VIII. VERIFICATION AND INVESTIGATION
OF THE CUSTOMS VALUE

Article 41. For purposes of the implementation of the Central American Legislation on the Customs Value of Goods, the national evaluation offices shall have the following basic functions:

(a) Compiling information and analyzing the elements necessary for the correct determination of the customs value;

(b) Preparing price lists of imported goods;

(c) Organizing and keeping up to date a register of importers, including data on the basis of which, together with other elements, their financial or other linkage can be established;

(ch) Effectively monitoring the customs value declarations and ordering the necessary inspections and audits;

(d) Maintaining close contact and exchanging information with SIECA, and also submitting to it copies of resolutions, instructions and such other administrative provisions as may be adopted in connection with the implementation of the Central American Legislation on the Customs Value of Goods;

(e) Maintaining close collaboration with, and submitting the necessary information to, the headquarters of the Regional Valuation Archive (data bank) in order to facilitate the correct implementation of the Legislation; and

(f) Other functions necessary for the effective application of the customs valuation rules contained in the Legislation and in these Regulations.

FINAL PROVISION

Article 42. These Regulations shall enter into effect when annexes “A” and “B” of the Convention enter into implementation or into force, and shall be published in the appropriate official gazette.

SOLE TRANSITIONAL ARTICLE

In order to enable users to accustom themselves to the requirements set forth in the customs value declaration form referred to in articles 38 and 39 of these Regulations, the latter shall be applied flexibly for 90 calendar days from the date on which these Regulations come into force. Within that period, each Contracting State shall establish the requirements for the submission of the said declaration in accordance with the procedures established by the Administration concerned.

DONE at the headquarters of the Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA), at Guatemala City, Republic of Guatemala, on 6 December 1985.

For the Government of Guatemala:

DANIEL ARRIOLA GALINDO
Minister of Economic Affairs

For the Government of El Salvador:

RICARDO GONZÁLEZ CAMACHO
Minister of Economic Affairs

For the Government of Nicaragua:

ORLANDO SOLÓRZANO D.
For the Minister of Foreign Trade

For the Government of Costa Rica:

ODALIER VILLALOBOS GONZÁLEZ
Minister of Economic Affairs and Trade

ANNEX

INSTRUCTIONS FOR COMPLETING THE CUSTOMS VALUE DECLARATION FORM

This declaration must be submitted simultaneously with the import document and shall be an integral part thereof.

1. Under this heading insert the name of the consignee.
2. Under this heading insert the name of the importer; if the consignee is the same as the importer, the name should be given in each case.
3. In this box insert the letter appropriate to the commercial level of the importer.
4. Under this heading insert the name of the consignor.
5. Under this heading insert the name of the exporter. If the consigner is the same as the exporter, the name should be given in each case.
6. In this box insert the appropriate letter indicating the exporter's line of business.
7. Insert the appropriate letter indicating the commercial linkage between the importer and/or the consignee and this exporter and/or consignor.
8. Insert the appropriate letter indicating the financial linkage between the importer and/or consignee and the exporter and/or consignor.
9. Indicate the agreed terms for delivery (FOB, CIF, etc.) and the time limit for delivery counting from the date of the order.
10. Insert an X in the appropriate box indicating the type of shipment.
11. Insert the date and number of the definitive commercial invoice.
12. Insert an X in the appropriate box indicating the form of payment.
13. Insert an X in the appropriate box indicating the type of invoice price or contract price.
14. Insert an X in the appropriate box depending on whether or not the provisions of chapter III of the Central American Legislation on the Customs Value of Goods is being complied with.
15. Indicate whether there is any obligation to pay a premium in addition to the invoice value to the exporter or to any other person for the utilization of patents for invention, protected drawings or models, foreign trademarks, etc.
16. Incremental charges and rebates means charges and rebates which must be include because they form part of the normal price in accordance with the definition of value in the Central American Legislation on the Customs Value of Goods.

Such charges and rebates are made in respect of commercial linkage, advance payment, delayed delivery, circumstantial discounts, samples or advertising. The Customs Administration must reconcile the value with such charges and rebates to verify that they have been omitted by the importer.
17. Deductible charges and rebates means charges and rebates that are normally applicable between the buyer and the seller in an arm's-length transaction, are general in nature and have been actually granted in respect of: quantity, cash payment, guarantee, technical assistance, interest of postpayment, domestic transport and services, packaging in accordance with the tariff regime, and so forth. The Customs Authority must reconcile the customs value of the goods with such charges and discounts to verify that they have not been deducted by the importer.
18. Sworn statement: the importer, consignee or legal representative must sign in this box to certify under oath the transactions, elements and data required in this document.

CUSTOMS VALUE DECLARATION NO.

CUSTOMS ADMINISTRATION (outgoing):		Date:		
1. Consignee:		4. Consignor:		
2. Importer:		5. Exporter:		
3. Commercial level <input type="checkbox"/>		6. Line of business <input type="checkbox"/>		
A. Individual C. Wholesaler E. Other		A. Individual C. Wholesaler E. Other		
B. Manufacturer D. Retailer		B. Manufacturer D. Retailer		
7. Commercial linkage <input type="checkbox"/>		8. Financial linkage <input type="checkbox"/>		
A. Agent C. Distributor		A. Parent company C. Affiliate		
B. Dealer D. Other		B. Branch D. Other		
9. Time limit and terms for delivery:		10. Type of shipment:		
		One-off <input type="checkbox"/> No. of consignments <input type="checkbox"/>		
		Breakbulk <input type="checkbox"/> Order of consignments <input type="checkbox"/>		
11. Date and number of commercial invoice		12. Form of payment		
		Cash <input type="checkbox"/> Advance <input type="checkbox"/>		
		Deferred <input type="checkbox"/>		
13. Invoice price or contract price		14. Whether or not conditions are fully competitive		
Definitive <input type="checkbox"/> Revisable <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>		
15. Linkage arising from industrial property rights				
Patent <input type="checkbox"/> Drawing <input type="checkbox"/>		Trademark <input type="checkbox"/> Model <input type="checkbox"/>		
Order No.:				
Documented value: US\$				
16. INCREMENTAL CHARGES AND REBATES	NON-QUALIFYING REBATES	For commercial linkage		
		For advance payment		
		For delayed delivery		
		For circumstantial discounts		
		For samples		
		For advertising		
		For other reasons		
		TOTAL	(+)	
	CHARGES NOT INDICATED IN THE INVOICE	Commission on purchase		
		Commission on sale		
		Brokerage		
		Freight		
		Other charges for carriage		
		Charges for documentation abroad		
		Insurance charges		
		Other charges		
	TOTAL	(+)		

17. DEDUCTIBLE CHARGES AND REBATES			
	REBATES ON THE INVOICE PRICE		
	For quantity		
	For cash payment		
	For guarantee		
	Other general rebates		
	TOTAL	(-)	
	Technical assistance		
	Interest on post-payment		
	Domestic transport and services		
	Packaging in accordance with tariff regime		
	Other		
	TOTAL	(-)	
NORMAL PRICE			
ADJUSTMENT FACTOR			
OBSERVATIONS BY THE CUSTOMS AUTHORITY		18. I declare under oath, and subject to the penalties referred to in the Central American Legislation on the Customs Value of Goods, that the information given in this form is true and correct.	
Accepting officer:			
Date:			

PROTOCOL¹ TO THE CONVENTION ON THE CENTRAL AMERICAN TARIFF AND CUSTOMS REGIME²

The Governments of the Republics of Costa Rica, El Salvador, Guatemala and Nicaragua,

Bearing in mind that:

1. The Convention on the Central American Tariff and Customs Regime adopted the new Standard Central American Tariff Nomenclature (NAUCA II), which constitutes the official classification of goods covered by the Central American Import Tariff, based on the Customs Cooperation Council Nomenclature (CCCN);

2. The International Convention on the Harmonized Commodity Description and Coding System³ replaced the CCCN at the international level with the Harmonized System;

3. The CCCN no longer being in use, articles 14 and 15 of the Convention on the Central American Tariff and Customs Regime and the authority of the Central American Tariff and Customs Council to modify NAUCA II are inoperative and incompatible with the current international classification, and the Central American Tariff and Customs Regime is accordingly rendered obsolete;

4. It is essential that the Central American Tariff adopt the nomenclature of the Harmonized System so that it may be kept up to date; it is therefore necessary to amend the relevant provisions of the Central American Tariff and Customs Regime;

Have decided:

To conclude the present Protocol to the Convention on the Central American Tariff and Customs Regime, for which purpose they have designated as their Plenipotentiaries:

His Excellency the President of the Republic of El Salvador: Mr. José Arturo Zablah Kuri, Minister of Economic Affairs;

His Excellency the President of the Republic of Nicaragua: Mr. Agenor Herrera Ubeda, representing the Minister of Economic Affairs and Development;

His Excellency the President of the Republic of Guatemala: Mr. Juan Luis Mirón, Minister of Economic Affairs; and

¹ Came into force on 28 February 1993, i.e., 8 days after the date of deposit with the General Secretariat of the Organization of Central American States of the third instrument of ratification, in accordance with article 5:

<i>Participant</i>	<i>Date of deposit of the instrument of ratification or accession (a)</i>
El Salvador	4 January 1993
Honduras	12 February 1993 (a)
Guatemala	19 February 1993
Nicaragua	19 February 1993

² See p. 367 of this volume.

³ United Nations, *Treaty Series*, vol. 1503, p. 3.

His Excellency the President of the Republic of Costa Rica: Mr. Gonzalo Fajardo Salas, Minister of Economic Affairs, Industry and Trade;

who, having exchanged their full powers, found in good and due form, agree as follows:

CHAPTER I. AMENDMENT OF THE CONVENTION
ON THE CENTRAL AMERICAN TARIFF AND CUSTOMS REGIME

Article 1. Article 2 (abbreviations and definitions) shall be amended as follows:

(a) The following shall be substituted for the acronyms NAUCA II and CCCN and the definitions thereof:

SAC: The Central American Tariff System, based on the nomenclature of the Harmonized System.

HS: The Nomenclature of the Harmonized Commodity Description and Coding System established by the Customs Cooperation Council.

(b) The following shall be added at the end:

Contracting State: Each of the States in which the present Convention is in force.

Article 2. Article 14 shall be amended as follows:

Article 14

NOMENCLATURE

The SAC constitutes the official classification of goods exported and imported at the level of Central America.

The Nomenclature of the Harmonized System, together with the amendments thereto at the date of signature of the present instrument and any future amendments thereto, shall serve as the basis for the SAC.

For the purposes of the uniform application of the Central American Import Tariff, the Explanatory Notes of the HS shall be followed.

Article 3. Article 15 shall be amended as follows:

Article 15

STRUCTURE AND MODIFICATION OF THE NOMENCLATURE

The SAC is divided into sections, chapters, sub-chapters, headings, sub-headings, items, rules and legal notes, including the Central American Complementary Notes and Rules.

The sections, chapters, sub-chapters, headings, sub-headings, rules of interpretation and legal notes correspond to the Nomenclature of the Harmonized System. The items and Central American rules and legal notes are additions specific to the SAC.

Any changes which the Customs Cooperation Council may make to the Nomenclature of the Harmonized System shall be incorporated in the SAC. SIECA shall inform each Contracting State of such changes and the date on which they enter into force.

The Council may establish, delete, replace or modify the Central American Complementary Notes and Rules and items as it sees fit, since they are an integral part of the SAC.

Changes to the SAC as referred to in this article shall not entail any changes in the rates of the corresponding import duties, except where those duties are determined in accordance with chapter VI of this Convention.

CHAPTER II. GENERAL PROVISIONS

Article 4. The provisions of chapter I of this Protocol shall be an integral part of the Convention on the Central American Tariff and Customs Regime and shall consequently be incorporated in the system of duration, validity, renewal, accession and denunciation of the Convention.

Article 5. The present Protocol shall be submitted for ratification in each signatory State, in accordance with the respective constitutional or legislative procedures. In the case of the first three States to ratify it, the Protocol shall enter into force eight days after the deposit of the third instrument of ratification and, in the case of those States ratifying it subsequently, on the date of deposit of the respective instrument of ratification.

Article 6. The General Secretariat of the Organization of Central American States shall act as depositary of the present Protocol and shall send a certified copy thereof to the Ministry of Foreign Affairs of each of the Contracting States and to the Permanent Secretariat of the General Treaty on Central American Economic Integration; and it shall notify them immediately of the deposit of each instrument of ratification.

Upon the entry into force of the Protocol, it shall also transmit a certified copy thereof to the Secretariat of the United Nations, in accordance with the provisions of Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the respective plenipotentiaries hereby sign the present Protocol at Guatemala City, Republic of Guatemala, on 9 January 1992.

For the Government of Costa Rica:

GONZALO FAJARDO SALAS
Minister of Economic Affairs, Industry and Trade

For the Government of El Salvador:

JOSÉ ARTURO ZABLAH KURI
Minister of Economic Affairs

For the Government of Guatemala:

JUAN LUIS MIRÓN
Minister of Economic Affairs

For the Government of Nicaragua:

AGENOR HERRERA UBEDA
Representative of the Minister of Economic Affairs
and Development
