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Committee on Customs Valuation

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT ON CUSTOMS VALUATION

Checklist of issues

PEOPLE'S REPUBLIC OF CHINA

The following communication, dated 1 July 2002, has been received from the Permanent Mission of the People's Republic of China.

With reference to the Decision on the Checklist of Issues (taken by the WTO Committee on 12 May 1995 and 25 April 1996), I have the honour to provide the Committee on Customs Valuation with China's responses to the Checklist of Issues.

1. Questions concerning Article 1:

- (a) Sales between related person:
- (i) *Are sales between related persons subject to special provisions?*

Yes, sales between related persons are subject to the provisions of Article 6, Article 34 of the Rules of General Administration of Customs of the People's Republic of China Regarding Determination on Customs Value of Imported and Exported Goods.

According to Article 6, where the seller and the buyer are related within the meaning of Article 42, the transaction value shall be accepted whenever the customs administration considers that the relationship did not influence the price or the importer demonstrates that such value closely approximates to the one of the following occurring at or about the same time:

- (a) the transaction value in sales to unrelated buyers of identical or similar goods for export to the People's Republic of China;
- (b) the customs value of identical or similar goods as determined under Article 9;
- (c) the customs value of identical or similar goods as determined under Article 10.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 4 and Article 5 and costs incurred by the seller in sales in which the seller and buyer are not related and that are not incurred by the seller in sales in which the seller and the buyer are related.

According to Article 34, when believing with grounds that the relationship between the buyer and seller influenced the transaction value, customs administration shall issue a written notice

to the importer with the grounds for belief and ask for further explanation in written form, including documents or other evidence, that could demonstrate the declared value is not influenced by the relationship between the buyer and seller. If, within 15 days from the date of issuance of the notice, the importer fails to provide further information or the customs administration still, after examining the document or evidence provided, has reasonable doubts that, the relationship between the buyer and seller did influence the transaction value, customs administration may refuse to accept the declared value and determine the customs value in accordance with the provisions in Article 7 to Article 11.

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

Not automatically, the presumptions set forth in Article 42 shall be grounds for deeming the parties to be related, namely,

- (a) they are the members of the same family;
- (b) they are officers or directors of one another's businesses;
- (c) one party directly or indirectly controls the other party;
- (d) both of them are directly or indirectly controlled by a third party;
- (e) together they directly or indirectly control a third party;
- (f) one party directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares of the other party;
- (g) one party is an employee, officer or director of the other party; or
- (h) the buyer and seller are legally recognized partners in business.

If the buyer and seller are associated in business with each other in that one is the sole agent, sole distributor or sole concessionaire of the other, they, if fall within the criteria of the foregoing paragraphs, shall be deemed to be related.

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

According to Article 34, when believing with grounds that the relationship between the buyer and seller influenced the transaction value, customs administration shall issue a written notice to the importer with the grounds for belief and ask for further explanation in written form, including documents or other evidence, that could demonstrate the declared value is not influenced by the relationship between the buyer and seller. If, within 15 days from the date of issuance of the notice, the importer fails to provide further information or the customs administration still, after examining the document or evidence provided, has reasonable doubts that, the relationship between the buyer and seller did influence the transaction value, customs administration may refuse to accept the declared value and determine the customs value in accordance with the provisions in Article 7 to Article 11.

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

According to Article 6, where the seller and the buyer are related, the transaction value shall be accepted whenever the customs administration considers that the relationship did not influence the price or the importer demonstrates that such value closely approximates to the one of the following occurring at or about the same time:

- (a) the transaction value in sales to unrelated buyers of identical or similar goods for export to the People's Republic of China;
- (b) the customs value of identical or similar goods as determined under Article 9;

- (c) the customs value of identical or similar goods as determined under Article 10.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 4 and Article 5 and costs incurred by the seller in sales in which the seller and buyer are not related and that are not incurred by the seller in sales in which the seller and the buyer are related.

- (b) Price of lost or damaged goods:

Are there any special provisions or practical arrangements concerning the valuation of lost or damaged goods?

According to Article 56 of the Customs Law of the People's Republic of China, if the goods is lost or damaged before customs clearance, the relevant duty shall be reduced or exempted.

2. How has the provisions of Article 4 to allow the importer an option to reverse the order of application of Article 5 and 6 been implemented?

According to Article 7 of the Rules, where the customs value of the imported goods cannot be determined under the provisions of Article 3, customs administration shall apply the following methods in its sequential order:

- (a) transaction value of the identical goods;
- (b) transaction value of the similar goods;
- (c) deductive value;
- (d) computed value; and
- (e) reasonable means.

At the request of the importer, the order of the application of the deductive value and the computed value might be reversed, provided that sufficient information been submitted.

3. How has Articles 5.2 been implemented?

According to paragraph 4 of Article 9, where neither the goods being valued nor the identical nor similar goods are sold within the customs territory of the P. R. China in the condition as imported, at the request of importer, the price of the goods after further processing shall be used to determine the customs value, due allowance being made for the value added for such processing, provided other conditions set in paragraph 1 are satisfied.

4. How has Article 6.2 been implemented?

According to paragraph 2 of Article 10, in determining the customs value of the imports, Customs may conduct on-site verification of the information provided by the producer of the goods in another country with the agreement of the producer and notification in advance to the government of the country or region in question.

5. Questions concerning Article 7?

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

According to Article 11, in applying reasonable means, the customs value of imported goods shall be determined in a manner consistent with the principles and general provisions of the Rules and

on the basis of information available in the customs territory of the People's Republic of China, other than the prices of the following:

- (a) the selling price in the customs territory of the People's Republic of China of the goods wherein produced;
 - (b) the higher of the alternative values;
 - (c) the selling price of the goods on the domestic market of the country of exportation;
 - (d) the price computed other than the values or costs of the first paragraph of Article 10;
 - (e) the selling price of the goods for export to a third country or region other than the People's Republic of China;
 - (f) minimum customs value, arbitrary or fictitious values.
- (b) What is the provision for informing the importer of the customs value determined under Article 7?

According to Article 36, upon written request, the importer or exporter shall have the right to ask for an explanation in writing from the customs administration as to how the customs value of the imported or exported goods was determined.

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

According to Article 11, no customs value of imported goods shall be determined on the basis of:

- (a) the selling price in the customs territory of the People's Republic of China of the goods wherein produced;
 - (b) the higher of the alternative values;
 - (c) the selling price of the goods on the domestic market of the country of exportation;
 - (d) the price computed other than the values or costs of the first paragraph of Article 10;
 - (e) the selling price of the goods for export to a third country or region other than the People's Republic of China;
 - (f) minimum customs value, arbitrary or fictitious values.
- 6. How have the options found in Article 8.2 been handled? In the case of f.o.b. application, are ex-factory prices also accepted?**

According to paragraph 1 of Article 3, the customs value of the imported goods shall be determined by customs administration on the basis of the transaction value, including the charges associated with the transport of imported goods and the cost of insurance and associated costs incurred prior to unloading of the goods at the port within the customs territory of the People's Republic of China.

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

The People's Bank of China publishes the official rate of exchange.

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

According to Article 38, customs administration shall keep confidential of the information, which is proprietary information provided by the buyer, the seller or other parties relating to the transaction.

9. Questions concerning Article 11?

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

According to Article 39, the importer or exporter who dissent from the decision of the customs administration on the customs valuation may apply for appeal in accordance with the relevant provisions of the *Customs Law of the People's Republic of China* and the *Regulations on Import and Export Tariff of the People's Republic of China*.

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

According to Article 64 of the Customs Law of the People's Republic of China, where the importer is involved in a dispute over duty payment with the customs administration, he shall pay the duties and then, apply to the customs for a reconsideration of the case. If the decision of reconsideration is still considered unacceptable, the importer may sue at the People's Court.

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

- (a)

- (i) *The relevant national laws;*

According to the Law for Legislation, all national laws shall be officially published in the Official Gazette. The Customs Law of the People's Republic of China adopted by the National People's Congress on 8 July 2000, promulgated on 1 January 2001 by Decree No.35 of the Chairman of the People's Republic of China, has been officially published.

- (ii) *The regulations concerning the application of the Agreement;*

According to the Law for Legislation, all national regulations shall be officially published in the Official Gazette. The Regulations on Verification and Determination of Customs Value of Imported and Exported Goods adopted by the Conference of Commissioners of the General Administration of Customs of the People's Republic of China on 25 December 2001, promulgated on 1 January 2002, has been officially published.

- (iii) *The judicial decision and administrative rulings of general application to the Agreement;*

They shall be officially published as well.

- (iv) *General or specific laws being referred to in the rules of implementation or application.*

They shall be officially published as well.

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

The Regulations on Import and Export Tariff of the People's Republic of China are being in the process of revision and shall be published upon the date of its approval. The said Regulations will cover the issues related to customs valuation of imported and exported goods.

11. Questions concerning Article13:

- (a) How is the obligation of Article 13(last sentence) being dealt with in the respective legislation?

According to paragraph 1 of Article 37, where customs administration decides that the determination of customs value needs to be postponed, the importer or exporter may, after submitting a guarantee according to the relevant regulations, request the goods be released from customs custody.

- (b) Have additional explanations been laid down?

According to paragraph 2 of Article 37, customs administration shall complete, within 90 days from the date of submitting guarantee, the verification of the goods released under a customs bond and send a notice regarding the conclusion to the importer or exporter.

12. Questions concerning Article16:

- (a) Does the respective national legislation contain a provision requiring customs authorities to give an explanation in writing as to how the customs value was determined?

According to Article 36, upon written request, the importer or exporter shall have the right to ask for an explanation in writing from the customs administration as to how the customs value of the imported or exported goods was determined.

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

There are no other regulations concerning the above- mentioned request.

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

The Interpretative Notes of the Agreement on Implementation of Article VII of GATT 1994 were included in the Chapter2 & 8 of the Rules.

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

The provision of the Decision of 26 April 1984 on the Treatment of Interest Charges in the Customs Value of Imported goods has not been implemented in China.

15. For those countries applying paragraph 2 of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, how have the provisions of this paragraph been implemented?

The provision of paragraph 2 of the Decision 24 September 1984 on the Valuation of Carrier Media Bearing Software for Data Processing Equipment has not been implemented in China.

-For all questions listed above, an indication of the references is requested.
