

## **PARAGRAPH 12 OF THE DOHA MINISTERIAL DECLARATION: IMPLEMENTATION-RELATED ISSUES**

### Questions from Members

#### 1. Questions from the United States

##### *Implications of the proposals*

- Would India confirm that each of its proposals in tiret 57, 58, 59, 60 and 61 would require amending the WTO Agreement on Customs Valuation?

*India's statement makes reference that "transfer pricing problems have increased manifold".*

- What specifically are the "problems" India is referring to?
- What is the specific factual basis for India's conclusion that such problems have "increased manifold"? Is India able to provide data?

*India's statement makes reference that "recent events have also further eroded the confidence in accounting practices followed by major accounting firms".*

- What "recent events" is India referring to?
- What does India see as the specific relevance to implementation of the WTO Agreement on Customs Valuation of such events and what it perceives as an erosion of confidence in accounting practices followed by major accounting firms?
- Would India agree that the issue of corruption within a customs administration is also relevant to implementation of the WTO Agreement on Customs Valuation?

*India's statement makes reference that "the Agreement requires that customs value should be based on the transactions [sic] value, or the actual value".*

- Does India understand the "transaction value" to be something other than "the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8"?
- Does India understand what it refers to as the "actual value" to be the same as the "transaction value" – i.e. "the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8"?

*India's statement makes reference that "the Agreement clearly qualifies that the actual value will be the sale price in the 'ordinary course of trade' and under 'fully competitive conditions'".*

- Where does the Agreement on Customs Valuation refer to the term "actual value"?
- Where does the Agreement on Customs Valuation use the phrase "ordinary course of trade"?
- Where does the Agreement require that "actual value" be "under fully competitive conditions"?
- Is it India's understanding that the Agreement on Customs Valuation qualifies that the "transaction value" must be the sale price "in the ordinary course of trade"?
- Is it India's understanding that the Agreement on Customs Valuation qualifies that the "transaction value" must be the sale price "under fully competitive conditions"?

*India's statement makes reference that for developed countries "import controls are minimal and are not based on value".*

- Does India have import controls that are based on value? If so, what type of import controls are these, and how do they operate?

*India's statement makes reference to a conclusion that "a developed country Customs Valuation Division may have about six under-valuation cases in a month to deal with".*

- What is the factual basis for India's conclusion? Is it referring to a specific country?

*India's statement sets forth that its proposals for tirets 57, 58, 59, 60 and 61 "seek to address ... the need to deter fraud, facilitate genuine trade and protect revenue".*

- Would India explain the specific manner in which tiret 57 will deter fraud?
- Would India explain the specific manner in which tiret 57 will facilitate genuine trade?
- Would India explain the specific manner in which tiret 57 will protect revenue?
- Would India provide similar specific factual explanations for tirets 58, 59, 60 and 61?

## 2. Questions from Australia

Tiret 58: There would appear to be no reason to resort to this proposal since the interpretative notes in Article 7 of the Agreement on Customs Valuation already deliver enough flexibility to use previously determined values. Why then are references to "domestic market price or export price in a third country" necessary?

Tiret 59: Given that the use of "the highest value" would introduce an arbitrary element into the valuation process, should not the most appropriate transaction value of identical or similar, not the highest, be used?

Tiret 60: Given that genuine buying commissions are not payments which accrue to or for the benefit of the vendor in the import sales transaction, what is the rationale for seeking their inclusion?

Tiret 61: It is not clear why persons associated with each other as sole agents, sole distributors and sole concessionaires should automatically be deemed "related". Article 15.4 already recognizes that the only involvement of sole agents, distributors and concessionaires with the import transaction is in their capacity of providing a client with a specific service. Thus, we would be grateful for clarification of the rationale for this proposal.

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