

WORLD TRADE ORGANIZATION

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Committee on Customs Valuation

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TRANSITIONAL REVIEW UNDER ARTICLE 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

*Written Questions from the United States on
documents G/VAL/N/2/CHN/1, G/VAL/N/1/CHN/1, and G/VAL/W/125*

The following communication, dated 3 October 2003, has been received from the Permanent Mission of the United States.

Regarding China's Responses to the WTO Checklist (G/VAL/N/2/CHN/1)

With regard to the Checklist, we note that China's answer to Question 1(a)(ii) does not appear to be responsive to the question. The question is whether China considers a transaction involving related parties (as defined in the CVA) to be prima facie grounds for determining that the price has been influenced by the relationship, not whether China applies the Article 15 CVA definition for related parties. We would appreciate clarification of this matter.

China's responses to Questions 9 and 10 refer to various Chinese Laws and Regulations that purportedly contain some provisions relating to the CVA. China noted that the "Regulations on Import and Export Tariff of the People's Republic of China" are in the process of revision and shall be published upon the date of its approval. When will these Customs Law and Regulations be available for Members to review?

Regarding China's Notification of its Implementing Law (G/VAL/N/1/CHN/1)

In the Decree, transaction value is defined as "the price actually paid or payable for the goods by the buyer adjusted in accordance with Articles 4 and 5 (i.e., the Article 8 CVA adjustments)." This differs from the definition of transaction in the WTO Agreement: "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." We ask China to address this important discrepancy immediately.

The definition of "price actually paid or payable" in Decree No. 95 differs from the definition in the WTO Agreement. Article 41 of China's Decree No. 95 states that "Price actually paid or payable" means the total payment, as a condition for the sale of the imported goods from the seller, directly or indirectly made, or to be made, by the buyer to or for the benefit of the seller to the third party." The phrase "price actually paid or payable" is defined in the Note to Article 1, in the WTO CVA as "the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods." The "price actually paid or payable" concept is one of the cornerstones of transaction value. We ask China to incorporate the WTO CVA definition into all relevant laws and regulations.

Regarding Related Parties - Circumstances of Sale Test

The Decree lacks the language of Article 1.2 and the corresponding Interpretative Notes of the CVA. There is no reference to the Circumstances of Sale Test and how it is to be applied. Article 6 of the Decree simply states that 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. Are provisions for the Circumstances of Sale Test addressed elsewhere in Chinese legislation or regulations?

The Decree does not appear to fully implement Articles 2 and 3 of the WTO CVA. Article 2 of the CVA provides that if the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be “the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.” Article 3 of the CVA provides that “if the customs value of the imported goods cannot be determined under the provisions of Article 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.” In contrast, Article 8 of the Decree states that in applying the transaction value method of identical or similar goods, “customs value shall be based on the transaction value of identical or similar goods imported at or about the same time as the goods being valued.” We request that China address these discrepancies.

In addition, the scope of identical goods and similar goods covered in the Decree differs from the CVA. Whereas Article 15 CVA states that goods shall not be regarded as “identical goods” or “similar goods” unless they were produced in the same country as the goods being valued, Article 41 of the Decree defines “identical goods” and “similar goods” as goods with specified characteristics that are produced in the same country or region. We ask that the reference to “region” should be deleted.

The Decree does not appear to implement Article 5.1(a)(1) and the applicable Interpretative Notes of the CVA. Article 5.1(a)(I) CVA provides for deducting “either commissions usually paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind.” In contrast, Article 9 of the Decree provides for the “deduction of profit, general expenses and commissions usually paid.” We ask that China address this discrepancy.

The Interpretative Notes to Article 5 CVA specify that the deduction for profit and general expenses should be taken as a whole and should be determined on the basis of information supplied by the importer unless the importer's figures are inconsistent with those obtained in sales in the country of importation of the imported goods of the same class or kind. The Decree contains no such provision. Therefore, we request that China make sure this provision is added to its legislation and regulations.

Article 10 of the Decree provides that an element of the computed value is “an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the imported goods being valued.” However, the Chinese law is lacking a provision set forth in the Interpretative Note to Article 6 of the WTO CVA - that the amount for profit and general expenses is to be taken as a whole and determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those “usually reflected in sales of the goods of the same class or kind.” Please provide additional information on this matter.

There is nothing in the Decree about currency conversion. Although China indicates in its WTO Checklist response that the Peoples' Bank of China publishes the official rate of exchange, there is no indication whether the currency conversion is the rate in effect at the time of exportation or the

time of importation as specified in Article 9 CVA. Please provide additional information on this matter.

Article 39 of the Decree indicates that the importer or exporter who dissents 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*. We have not seen either the referenced Law or the Regulations. Therefore, we cannot determine whether China has fully implemented the provisions of Article 11 and the applicable interpretative notes. We ask China to make the Customs Law and the Regulations available for Members to review as soon as possible.

Article 37 of the Decree provides that where [the] 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. Without reviewing the relevant regulations, we cannot determine whether they meet the requirements of Article 13 CVA. We ask China to make the Law and the Regulations available for Members to review as soon as possible.

In addition, we request that China provide information on “sufficient guarantees.” Article 66 states that “In case where the importer or exporter asks the Customs to release the goods before the determination of goods classification of Customs Valuation, or presentation of effective declaration documents or completion of other Customs formalities, the Customs shall release the goods against the securities provided by the importer or exporter which is compatible with his legal obligation according to the law.” There is no indication of what these legal obligations are or how the requisite security amount is determined. China is requested to provide more information, including the applicable laws and regulations, on the scope of these exceptions.

Pursuant to Article 14 CVA, the Interpretative Notes form an integral part of the Agreement. Although in its responses to the Checklist of Issues, China states that the Interpretative Notes of the Agreement were included in Chapters 2 & 8 of the Decree, these chapters include only a few of the Interpretative Notes. For example, most of the interpretative notes pertaining to Articles 1, 5, 6, 7 and 8 are absent. We ask China to ensure that the Interpretative Notes are incorporated into its laws and regulations.

The Decree does not include the provisions of Article 15.2(c) regarding the scope of identical and similar goods. We ask that China address this discrepancy.

The Decree does not include Article 15.3, regarding the definition of goods of the same class or kind. We ask that China address this discrepancy.

We request a clarification of Article 19 of the Decree. To what does this Article apply? Please provide an explanation of the formula.

Regarding China's Submission on “ Information Required under Annex 1A” (G/VAL/W/125)

In Doc. G/VAL/W/125 reference is made to the “Regulations on Import and Export Tariff of the People's Republic of China” and the “Rules of General Administration of the People's Republic of China Regarding Determination on Customs Value of Imported and Exported Goods.” We request that China make these regulations available to WTO members for review.

In its accession agreement, China committed to apply the provisions of the WTO Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods no later than

11 December 2003. In G/VAL/W/125, China states that it will implement this commitment in a timely manner. Please describe the legal steps that China plans to take to implement this commitment.

In its accession agreement, China committed to apply implement the provisions of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment no later than 11 December 2003. In G/VAL/W/125, China states that it will implement this commitment in a timely manner. Please describe the legal steps that China plans to take to implement this commitment.
