

**PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE**

Proposals Regarding the Implementation of the Agreement on Implementation of  
Article VII of the GATT 1994 in terms of Paragraph 9(a)(i)  
of the Geneva Ministerial Declaration

*Communication from India*

The following communication, dated 2 July 1999, has been received from the Permanent Mission of India.

**1. Issue: Ministerial Decision regarding rejection of transactions value method in doubtful cases**

1. Article 1 of the Agreement on Implementation of Article VII of the GATT 1994 is to be read together with Article 8 which provides *inter alia* for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. The Agreement, therefore, enjoins customs administrations to accept the transaction value except in specified circumstances as laid down in Article 1. Article 17 of the Agreement recognizes that in cases where there may be reason for doubt, customs administrations may satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes. Paragraph 6 of Annex III to the Agreement secures full cooperation of importers in the conduct of enquiries by a customs administration in this regard.

2. However, these provisions are inadequate to deal with situations such as collusion between the importer and exporter for undervaluation of goods aimed at evading customs duty. Verification and enquiry by customs administrations set out in Article 17 would not enable the establishment of fraud in such instances. Furthermore, the importer can not be expected to fully cooperate with customs administrations when he is a party to undervaluation and to suppression of information.

3. At the Marrakesh meeting of April 1994 a decision was taken by the Ministers to deal with this issue ("Decision Regarding Cases Where Customs Administrations have Reasons to Doubt the Truth or Accuracy of the Declared Value" taken by the WTO Committee on Customs Valuation at its first meeting held on 12 May 1995 pursuant to the Marrakesh Decision). This Decision sets out the procedures to be observed in such cases and may be particularly useful in cases where a manufacturer's invoice has not been submitted and where the declared value is much less than the traded prices given in contemporaneous reputed international publications or is less than the price at which the goods are sold in the ordinary course of trade under fully competitive conditions.

### **Proposal**

4. For practical applicability, this Decision may be incorporated in the WTO Agreement itself as it will help in a significant way in tackling the problem of undervaluation which is reported to be rampant in many developing countries, especially those where the rates of customs duty are relatively high.

#### **2. Issue: Multilateral arrangement for exchange of information on customs value**

5. The provisions of the Agreement do not address the situation where an exporter files the correct export declaration to the customs authorities, but the importer unilaterally resorts to mis-declaration of value to the customs authorities in the importing country to evade due customs duty. To tackle this problem, the practice of entering into bilateral agreements for exchange of information regarding customs value as evolved. But this is not a practical and enduring solution to the problem.

### **Proposal**

6. A multilateral solution that enables customs administrations of importing countries to seek and obtain information on export values contained in the export declaration to the customs administrations of exporting countries, in a time-bound manner, in doubtful cases, is proposed.

#### **3. Issue: Determination of customs value on the basis of transactions value of identical or similar goods**

7. Where the customs value can not be determined under the provisions of Article 1, Articles 2 and 3 of the Agreement proceeding sequentially envisage consultation between the customs administration and the importer with a view to arriving at a "identical goods" or "similar goods" basis of transaction value. The Agreement provides that if in applying these Articles more than one transaction value of identical or similar goods is found, the lowest of such values shall be used to determine the customs value of the imported goods. This provision creates a bias in favour of importers and could lead to manipulation. In fact, in many instances the variation between the lowest value and the highest value of identical or similar goods is very wide and there may be a concentration of transactions in the higher end of the range. In a situation where the transaction at the far lower end results from a deliberately conducted import consignment, a pilot consignment at a suppressed value, the resultant application of the provision that the lowest value shall be used to determine the customs value of the imported goods may not fall within the general principles of valuation set forth in these Articles.

### **Proposal**

8. This situation needs appropriate correction to avoid manipulation of import prices and a better approximation of "transaction value". It is proposed that the Agreement should be amended to provide for the highest value when more than one transaction value of identical or similar goods is found.

#### **4. Issue: Buying commissions**

9. Under Article 8 of the Agreement, adjustments to the price actually paid or payable is provided in cases where certain elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Commissions and brokerage, except buying commissions, therefore, have to be taken into consideration in determining the customs value. "Buying commissions" are payments

made by an importer to his agent for the service rendered by the agent towards representing the importer overseas in the purchase of the goods under valuation. Buying agents may also, in some instances, buy the goods from the manufacturer or trader in that country using own funds and re-invoice the purchase to the importer. The Agreements recognizes the second invoice price as the transaction value in such instances. However, manipulation through artificially reduced re-invoice prices frequently occurs to mutual benefit. The exclusion of buying commissions from the computation of value encourages such under-invoicing and the artificial splitting of value, especially when purchases are first made by buying agents and are re-invoiced to the importer.

### **Proposal**

10. Buying commissions should, therefore, be taken into account in the determination of customs value of imported goods as it forms a legitimate component of the landed cost of imported goods.

### **5. Issue: Cost of services, such as engineering, development and design**

11. Under Article 8:1(b)(iv) of the Agreement, addition of cost of services such as engineering, development, and design work, which are supplied directly or indirectly by the buyer free of charge or at reduced cost for the production of goods under import, is permitted only if the services are undertaken other than in the country of importation. This provision provides room for the splitting of the import value, by claiming that part of the services were rendered in the importing country itself.

### **Proposal**

12. It is proposed that the cost of such services, which are integral to the value of the imported goods, should be included in the valuation irrespective of whether they were undertaken in the country of importation.

### **6. Issue: Imports by sole agents, sole distributors and sole concessionaires**

13. Valuation of imports by sole agents, sole distributors, and sole concessionaires of large corporations, including transnational corporations, poses a problem as such entities are not considered as "related persons" automatically under Article 15:5 of the Agreement. If such entities sell the product at specially reduced prices, there may be no means available with customs administrations to check the veracity of such special prices. Article 1:2(a) and (b) provide safeguards in the matter of acceptance of transaction value for customs purposes between a buyer and a seller who are "related".

### **Proposal**

14. In order to shift the burden of proving that the prices quoted are not influenced by the relationship to the agents, distributors or concessionaires, as the case may be, persons associated with each other as sole agents, sole distributors, and sole concessionaires, howsoever described, should therefore automatically be deemed "related".

### **7. Issue: Determination of customs value under the residual method in Article 7 of the Agreement**

15. The determination of customs value under the residual method is set out in Article 7 of the Agreement. Article 7.2 prohibits, *inter alia*, determination of customs value on the basis of: (i) the price of goods in the domestic market of the country of exportation; and (ii) the price of the goods for export to a country other than the country of importation. The exclusion clause (c) in paragraph 2, however, creates a situation of dichotomous treatment. Under the WTO Agreement on Anti-Dumping, a product is to be considered as being dumped (that is, introduced into the commerce of another

country at less than its normal value), if the export price of the product is less than the comparable price for the like product sold in the domestic market or is less than the export price in a third country where there is no sale in the domestic market. Therefore, while the Agreement on Anti-Dumping takes cognisance of the domestic price and export price in a third country, the Customs Valuation Agreement explicitly excludes such a possibility.

**Proposal**

16. The residual method of determining customs value appropriately should be inclusive of all residual eventualities, allowing valuation based on domestic market price or export price in a third country with appropriate adjustments.

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