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CUSTOMS VALUATION

The following text of a draft valuation code is circulated at the request of the delegation of India.

Draft Valuation Code

Article 1

1. The customs value of goods imported on the basis of a sale shall be the transaction value that is, the price actually paid or payable for the imported goods, adjusted in accordance with Article 9 (and other articles of this Code to be specified later).

Provided that:

The customs administration of the country of import is satisfied on the basis of the "general price level" or otherwise that such value represents the price in a sale in the ordinary course of trade under fully competitive conditions, the price being the sole consideration for the sale.

If the transaction value does not satisfy the aforesaid provisions, the customs value shall be based on a price conforming to the general price level.

2. The general price level shall be the transaction value of a like product or in its absence of another product possessing characteristics closely resembling those of the product imported, in particular as regards condition, type and quality. Transactions in comparable quantities and at the same commercial level as the goods being valued between parties who are not related shall alone form the basis for determining the general price level and where such transactions are at different prices, the lowest price shall be the basis. In determining the general price level, the transaction value of goods imported from the same country shall have precedence over the transaction value of goods imported from other countries. Further, the transaction value of goods bearing a trade mark different from that of the goods being valued shall not be applied in the case of products imported for being put up for retail sale.

Note: Where the buyer and the seller are related within the meaning of Article but the transaction value of the imported goods conforms to the provisions of this article and it is established to the satisfaction of the customs administration of the country of import that the relationship has not influenced the general price level, such value shall be accepted, notwithstanding the relationship.

Article 2

(i) If the customs value of the goods imported cannot be determined under the provisions of Article 1, such value shall be based on the price at which such or like imported goods are sold or offered for sale in the country of importation at a time and place to be determined by national legislation. The price to be adopted should be the lowest price for the largest lot on a sale to an unrelated buyer in open market conditions.

(ii) Such price if inclusive of the following cost elements, shall be reduced by the amount representing such cost already included in such price:

- (a) cost, charges and expenses incidental to the sale and delivery;
- (b) profit of the seller;
- (c) customs duties and other taxes payable in the country of importation on importation and sale of the goods.

(iii) Where appropriate, in accordance with the national legislation, reduction on account of one or all the charges and costs mentioned in Article 9(2) shall also be allowed.

Article 3

1. Where the customs value of the goods imported as an incomplete or unfinished article which has assumed the essential character of the complete or finished article at the time of importation cannot be determined in accordance with the provisions of Article 2, it shall be based on the price at which the finished or complete article manufactured from such or like imported article is sold or offered for sale in the country of importation at a time and place determined by the national legislation and otherwise subject to the provisions of Article 2. Such price shall be reduced by an amount equal to the value added in the process of completing or finishing the article.

2. The customs value of components and unfinished articles not covered by sub-paragraph 1 whether imported by way of sale or otherwise, which are sold in the country of importation only after further processing or assembly, or not sold at all, and which are imported under a collaboration agreement between the importer and the exporter, or where the importer and the exporter are related to each other within the meaning of Article shall be:

(i) the price at which the final product is sold or offered for sale in the country of importation after assembly or further processing, as the case may be, at a time and place determined by national legislation, and otherwise subject to the provisions of Article 2, due allowance being made for the value added in the process of assembly or further processing of the article after importation but before sale; or,

(ii) where the components or articles are not sold in the country of importation, the total payment made to the foreign supplier in relation to the goods, and adjusted where appropriate in terms of Article 9.

Article 4

The customs value of goods imported otherwise than by way of sale, other than goods to which Article 3 applies, shall be the total payment made to the foreign supplier in relation to the goods, and adjusted where appropriate in accordance with Article 9. Such importations may include those:

- (i) by agents for stock;
- (ii) by branches;
- (iii) of unsold goods by sole distributors and sole concessionaires functioning as agents;
- (iv) of goods under a profit-sharing agreement;
- (v) of goods on consignment for sale at the best price obtainable;
- (vi) of goods which are the subject of barter or compensation deals;
- (vii) of goods on hire (such as certain types of machines for use or exposed cinematograph films for screening);
- (viii) by associated houses not functioning, in respect of the imported goods, as distributing agents or as independent merchants;
- (ix) by associated houses, of machinery, equipment, etc., imported for their own use;
- (x) of goods returned after processing or repair abroad.

Article 5

1. If the customs value of the imported goods cannot be determined under any of the provisions of Articles 1 to 4 inclusive, the value shall be determined using reasonable means consistent with the principles and general provisions of this code and Article VII of the General Agreement.
2. Where he so requests, the importer shall be informed in writing of the value determined under the provisions of this Article and the method used to determine such value.
3. In applying this Article, only sales between parties who are not related shall be used. A valuation method set forth above shall not be used if it will result in a customs value which is unreasonable in the commercial circumstances surrounding the transaction covering the goods being valued.

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Explanatory Note

1. A draft valuation code has been prepared by the Indian Delegation as a modification of the proposal contained in document MTN/NTM/W/175.
2. There are five articles in the draft; the scope of each of these articles and the reasons for modification of the draft in MTN/NTM/W/175 are explained below.
3. Article 1 gives the basic provision on valuation, on the principles contained in Article VII of the GATT, read with Annex I. It provides for acceptance of the transaction value subject to the condition that such value on comparison with the import prices of like goods noticed by the Customs Administration of the country of import are found to be acceptable.
4. Where the transaction value does not pass this test, it has been provided in Article 1 that a substitute value worked out on the basis of the "general price level" shall be taken to be the transaction value. In working out this price level (in the absence of transaction value of a like product) the transaction value of another product "possessing characteristics closely resembling those of the product imported" can also be used. (This provision has been made on the basis of suggestion made in MTN/NTM/W/7 prepared by the GATT Committee on Trade in Industrial Products).

However, such comparison has not been permitted in the case of goods bearing different trade marks when such goods are imported for being put up for retail sale. This provision will also apply to transactions between related parties. These provisions permit a simple technique of valuation:

(i) Invoice price of imported goods will be compared with the price of like goods already accepted, and allowing for differences on valid commercial considerations will be accepted. Otherwise, the price on record and applicable in the particular case (considering the quantity and level) will be applied. This will ensure quick assessment and adequate check on fraud.

(ii) Because of adherence to like products (another product only when like product is not on record for comparison) and exclusion of comparison of branded products imported for being put up for retail sale, when the brand is not identical, adequate provision has been made for restricting the comparison among products which normally command a like price.

5. The concepts of "identical goods" and "similar goods" as in MTN/NTM/W/175 have not been adopted as these extend the area of comparison to cover products which cannot command a comparable price. The limited comparison among products of different brands which are not imported for being put up for retail sale will permit comparison mainly in the field of industrial and agricultural products which are more or less competitive with each other.

6. Article 2 provides for deducing the transaction value from sale price in the country of importation and is more or less on the lines of Article 4 of document MTN/NTM/W/175.

7. Article 3 (1) provides for deducing the transaction value in the case of unfinished articles which have assumed the character of finished articles, from the sale price of such finished articles as per Article 2.

8. Article 3 (2) provides similarly for components and other unfinished articles which are sold after further processing or not sold at all (being for consumption by the importer) and in the case of goods not sold provides for deducing the transaction value from the total payment made in relation to the goods.

9. These provisions will be helpful particularly in the case of products which are not traded in as such but which reach the market (or do not reach at all as such) only after further manufacturing process.

10. The difference between products specified in Article 3(1) and 3(2) lies in the fact that in the case of the former the goods are generally sold after finishing operations, but these have already assumed the character of the finished article at the time of importation, whereas in the case of the latter these are components, (finished or unfinished) which (if sold at all as such) are sold after further manufacturing process, or after assembly making a new product.

11. Article 4 deals with goods which are not imported as a result of sale and covers different miscellaneous transactions specified in the Article, such as importation by agents and branches for stock and resale, those on consignment basis, goods on hire, exposed cine films for screening etc.

12. Here again assessment of customs duty will be on total payment made in relation to the goods, with suitable adjustment.

13. Article 5 provides for a residuary basis parallel to Article 7 of document MTN/NTM/W/175, though the techniques mentioned in that document have not been incorporated as these have been more or less rendered redundant because of the provision in new Article 1.

14. Some of the other Articles of document MTN/NTM/W/175 (such as Articles 9, 19, etc.) require modification. The new draft seeks to bring into focus other alternatives on valuation with the idea of achieving a broad consensus on the most suitable techniques for valuation, consistent with the valuation principles contained in Article VII of the GATT read with Annex I. Once consensus is reached on the technique, it may be less difficult to work out an acceptable draft code.