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Page: 1/3

Committee on Customs Valuation

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**NOTIFICATION UNDER ARTICLE 22 OF AGREEMENT ON IMPLEMENTATION  
OF ARTICLE VII OF THE GENERAL AGREEMENT  
ON TARIFFS AND TRADE 1994**

QUESTIONS FROM CHINA TO INDIA REGARDING DOCUMENT G/VAL/Q/IND/6

INDIA

The following communication, dated 14 November 2023, is being circulated at the request of the delegation of China.

China would like to thank India for its responses contained in document G/VAL/Q/IND/6, which aimed to answer the questions raised by China in document G/VAL/Q/IND/1. We have some follow-up questions and some new questions, and we would appreciate further clarifications from India.

**A. Follow-up questions regarding India's responses to questions raised in document G/VAL/Q/IND/1**

**Responses from India**

1. In terms of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rule 2007, as amended, the value of the imported goods shall be the value of such goods, and shall include –

- a. the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
- b. the cost of insurance to the place of importation.

2. Cost of freight and insurance is added on an actual basis to the FOB price of imported goods. The freight of the imported goods incurred in its transportation in the exporting country (i.e. from the factory to the port of exportation) is not computed separately. The FOB (being an accepted INCO term for international commercial transactions) includes such transportation costs.

**Follow-up questions**

1. If the transaction between the buyer and seller of the imported goods is concluded based on EXW (being an accepted INCO term for international commercial transactions), and the domestic freight (from the factory to the port of export) is not ascertainable, how to determine the freight in order to arrive at a FOB price?

2. Regarding the determination of the cost of freight and insurance to be added to the FOB price of imported goods, should the element "paid by the buyer" be taken into account? Does any provision of India's legislation set out any requirement in this regard?

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**B. New questions regarding Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rule 2007**

1. Rule 10(1) of Customs Valuation (Determination of Price of Imported Goods) Rules 2007 provides that:

*In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -*

*(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-*

*(i) commissions and brokerage, except buying commissions;*

*(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;*

*(iii) the cost of packing whether for labour or materials;*

*(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:-*

*(i) materials, components, parts and similar items incorporated in the imported goods;*

*(ii) tools, dies, moulds and similar items used in the production of the Imported goods;*

*(iii) materials consumed in the production of the imported goods;*

*(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;*

*(c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;*

*(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;*

*(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.*

*Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.*

It is noted the above provisions are very similar to the provisions set forth in Article 8 of the Agreement, with an exception that there is an additional provision - sub paragraph (e).

However, Article 8.4 stipulates that "No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article".

China would like to seek clarification from India on whether the provisions of Rule 10(1) implement any provisions of the Agreement.

2. It is noted that the wording of Rule 10(1)(e) of Customs Valuation (Determination of Price of Imported Goods) Rules 2007 is very similar to Paragraph 7 of Annex 3 of the Agreement which further amplifies the definition of Price actually paid or payable under Article 1. However, the provisions of Rule 10(1) seem to provide for the adjustments which should be included in Customs value under Article 8. China would like to seek clarification from India on whether Rule 10(1)(e) implements any provision of the Agreement.

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