

**REPLIES TO QUESTIONS POSED BY THE UNITED STATES  
REGARDING CHINA'S NOTIFICATION UNDER ARTICLE 22  
OF THE CUSTOMS VALUATION AGREEMENT**

China's responses to US questions regarding China's legislation related to customs valuation<sup>1</sup>

The following communication, dated 22 October 2004 is being circulated at the request of the delegation of the People's Republic of China.

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

Question 1: 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 its relevant laws and regulations, or otherwise explain the reason for the definition in Article 41 which is not consistent with the CVA definition.

Reply: The differences in the wording result from the translation of the text from Chinese to English. There is no discrepancy in nature.

Based on the corresponding Note to Article 1 of the CVA, the "price actually paid or payable" concept under article 41 of the said Decree have been interpreted and explained in a summarized manner in Chinese. The connotation and denotation of the above-mentioned concept is essentially the same with that defined under the CVA.

2. Regarding Related Parties - Circumstances of Sale Test

Question 1: 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. We note that the Regulations notified in G/VAL/N/1/CHN/4 do not address this issue. There is no explanation of the "circumstances of sale" test. Nor is there any reference to the other method specified in Article 1.2 of the CVA for

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<sup>1</sup> G/VAL/W/137.

demonstrating that transaction value is acceptable (that is, closely approximates certain previously accepted customs values). Please indicate how the provisions of Article 1.2 of the CVA and the applicable interpretative notes will be implemented.

Reply: Provisions of Article 1.2 and the corresponding Interpretative Notes of the CVA are embodied in the said Decree. It is provided in Decree 95 that transaction value can not be simply refused on the ground that the seller and the buyer are related. China Customs shall conduct an examination on the circumstances of sale in accordance with relative provisions stipulated in Article 6 and Article 34 of the said Decree.

Question 2: The scope of identical goods and similar goods covered in the Decree differs from the CVA. Whereas Articles 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.

Reply: The concept of "region" in Article 41 of the Decree refers to separate Customs territories, which is not in conflict with Article 15 of the CVA.

Question 3: 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. We seek an explanation for this situation, and request that China make sure this provision is added to its legislation and regulations.

Reply: The Decree 95 has clearly stipulated in Article 43 that the "profits and general expenses" referred to in Article 9 of the regulation shall be determined on the basis of the information provided by the importer. If the importer's figures are inconsistent with those of the goods of same class or kind sold within the customs territory, the profits and general expenses shall be determined on the basis of the figure of the goods of same class or kind sold within the customs territory.

Question 4: 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, providing an explanation for the absence of this type of provision.

Reply: The Decree has clearly stipulated in Article 44 that the "profits and general expenses" referred to in Article 10 shall be determined on the basis of the information provided by the manufacturer outside of the customs territory. If the information provided by the manufacturer outside of the customs territory is inconsistent with that of the same class or kind sold by other manufacturers to the customs territory, the profits and general expenses can be determined on the basis of other information.

Question 5: 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. Although Article 22 of the notified Regulations addresses currency conversion, it does not provide

whether the applicable rate is the rate in effect at the time of exportation or the time of importation. Please provide additional information on this matter.

Reply: Article 2 of Proclamation No.80 stipulates that where the transaction value and associated costs are computed in a foreign currency, the rate of exchange to be used for the determination of the Custom value shall be the basic exchange rate published by the People's Bank of China on the 3<sup>rd</sup> Wednesday of the previous month, which is applicable at the time of importation or exportation. Where such basic exchange rate is not available for the foreign currency in question, the middle price between the buying and the selling published by Bank of China in the same period shall be used.

Question 6: 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 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 note that Article 64 of the notified Regulations provides for the right to appeal the determination of the customs value to the People's Court. Please cite to where it is provided that the appeal is without penalty and that the appellant will receive written notice of the decision as required by article 11 of the CVA.

Reply: The rights of appeal without penalty and to receive written notice of the decision are provided for in *Administrative Procedure Law of People's Republic of China* and *Administration Reconsideration Law of People's Republic of China*. The administrative procedures of the Customs are covered by these two laws.

Question 7: 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. The notified Regulations do not address the requirements of Article 13 of the CVA. Please provide information on the specific operation of the process to be in compliance with Article 13 of the CVA, and indicate where this will be provided for in the law or regulations.

Question 8: 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 or 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 law." There is no indication of what these legal obligations are or how the requisite security amount is determined. Article 66 specifies two exceptions for the release of goods, plus an additional exception for "other circumstances where the laws and administrative regulations have provided for." China is requested to provide more information, including the applicable laws and regulations, on how the security amount is determined and on the scope of these exceptions. The notified Regulations do not address these issues.

Reply: The "legal obligations" refer to those provided for in *Customs Law of the People's Republic of China*, such as payment of duties and taxes, going through customs procedures, etc.

Article 66 of the Customs Law of the People's Republic of China and Article 37 of the Decree fully incorporate Article 13 of the CVA. We are currently drawing up specific rules on the determination of sufficient guarantees.

Question 9: Pursuant to Article 14 CVA, the Interpretative Notes from 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 Chapter 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 and incorporated into its laws and regulations.

Question 10: 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.

Question 11: The Decree does not include the provisions of Article 15.3, regarding the definition of goods of the same class or kind. We ask that China address this discrepancy.

Reply: The substantial contents of the interpretative notes and relevant articles of CVA have already been included in *The Rules of General Administration of Customs of People's Republic of China Regarding Determination of Customs Value for Import and Export Goods*. However, we are now under the revision of the said Rules to reflect the notes and articles much more clearly.

Question 12: We request a clarification of Article 19 of the Decree. To what does this Article apply? Please provide an explanation of the formula.

Reply: Firstly, regarding the application of Article 19:

Pursuant to Article 57 of *Customs Law of People's Republic of China*, duty reduction or exemption may be granted to import and export goods of specific areas, specific enterprises or for specific purposes. Article 49 of *REGULATIONS ON IMPORT AND EXPORT TARIFF OF THE PEOPLE'S REPUBLIC OF CHINA* provides that where the import goods which are granted duty reduction or exemption and the use of which are under the Customs control are diverted to other purposes within the duration of Customs control and therefore the recovery of duties is needed, the import duty shall be recovered by the Customs on the basis of the value of import goods depreciated according to the time after importation.

Article 19 of the Decree applies to the situations described in Article 49 of *REGULATIONS ON IMPORT AND EXPORT TARIFF OF THE PEOPLE'S REPUBLIC OF CHINA*.

Secondly, regarding the formula:

The formula is used to calculate the customs value of the imports with specified duty reduction or exemptions granted and are subject to full payment of import duties.

The "value of the goods determined at the time of importation" means the customs value determined by the customs pursuant to the provisions of *The Rules of General Administration of Customs of People's Republic of China Regarding Determination of Customs Value for Import and Export Goods* at the time of importation when the goods were imported with specified duty reductions or exemptions granted.

"The time accurately used as of the application for paying duties (in term of months)" means the duration of time starting from the date on which the goods are released till the date when the goods is subject to customs duty. No matter whether the said goods have been used or not, the time is measured by month.

"Statutory years for customs custody" means the time period set by the Customs to ensure that the goods with duty reduction or exemption for the specified areas, enterprises or purposes be put into use as declared. The period is measured by year.

Question 13: Article 21 of the notified Regulations states that "where the transaction value of imported goods does not comply with the conditions prescribed in Paragraph 2 of Article 18 of these

Regulation, or it is impossible to determine the transaction value, the Customs shall ...". Please explain what is meant by the phrase "it is impossible to determine the transaction value", with specific examples of such situations.

Reply: The phrase "it is impossible to determine the transaction value" is not translated very accurately to its Chinese equivalent. It should be put as "where the transaction value can not be determined". That refers to the situation when the transaction value can not be determined pursuant to Article 18, 19, 20 of *REGULATIONS ON IMPORT AND EXPORT TARIFF OF THE PEOPLE'S REPUBLIC OF CHINA*. For example, Addition or deduction to the price actually paid or payable can not be made on the basis of objective and quantifiable data, or when the goods and articles are donated or rendered as gifts.

3. Regarding document G/VAL/N/1/CHN/3, "The Customs Regulations of The People's Republic of China Regarding Determination on Customs Value of Royalties and License Fees Related to the Imported Goods," we have the following questions:

Question 1: Article 3 provides that "royalties and licence fees shall be added to the customs value of imported goods provided the payments meet both the following conditions..." This provision does not address the situation where the royalty or licence fee is already included in the price. Is provision made elsewhere for this situation?

Reply: *The Customs Regulations of the People's Republic of China Regarding Determination on Customs Value of Royalties and Licence Fees Related to the Imported Goods* further interprets Article 4.3 of the Decree No. 95. According to Article 3.2 of the latter regulation, the transaction value of the imported goods is the price actually paid or payable for the goods by the buyer adjusted in accordance with the provisions of Article 4 and Article 5. Customs do not have to adjust the declared value if the Royalties and Licence Fees have already been included.

Question 2: Article 4 provides that royalties and licence fees in accordance with the provisions of articles 5 through 8 shall be deemed to be related to the imported goods. Does this mean that an importer could not present evidence that in the particular circumstances presented that the royalties and licence fees are not related to the imported goods?

Reply: No. It does not deny the right of an importer to present evidence to demonstrate that in particular circumstances royalties and licence fees are not related to the imported goods.

Question 3: Article 5 addresses royalties and licence fees paid for the right of patent or know-how. Paragraph 2 of Article 5 provides that where patent or know-how is imported in the form of magnetic tapes and disks, CDs or other similar media, whether downloaded from network, or transmitted via satellite, it shall be deemed to be related to the imported goods in terms of the above provisions. We would like further explanation of this provision. How will it be determined whether this media is related to the categories of goods listed in the first paragraph of Article 5?

Reply: The way of determination is already explained in the first paragraph of Article 5.

Question 4: Under Article 6 royalties and licence fees paid for the right of trademark would be deemed related to the imported goods where the trademark is affixed after importation. We would like further explanation of this provision. How would you address the situation where the imported goods are assembled and/or processed in China and the trademark is affixed to the assembled/processed good?

Reply: According to Article 6, royalties and licence fees shall be considered to be related to the imported goods if the trademark is affixed to the goods after minor processing in China.

According to Article 15 of the said regulation, the term "minor processing" means diluting, mixing, sorting out, primary assembling, repacking, and other similar processing, etc.

Question 5: Articles 5 and 7 both refer to imported software. How do these provisions relate to China's application of the WTO Committee on Customs Valuation Decision 4.1? We have some concerns that these provisions could be used to circumvent that decision.

Reply: At the time when the said regulations entered into force, Decision 4.1 had not been implemented in China. Ever since 11 December 2003 when China began to implement Decision 4.1 as committed, China Customs has been implementing Proclamation No. 66 of 2003, which stipulates that in determining the customs value of carrier media bearing data or instructions, only the cost or value of the carrier medium itself shall be taken into account, provided this cost is distinguished from the cost or value of the software.

Question 6: Reference is made to minor processing in Article 6 and 8. This term is defined in Article 15 to include primary assembling. Can you provide an explanation of primary assembling?

Reply: "Primary assembling" actually means "simple processing", referring to a kind of simple and non-substantial processing of the imported goods, such as putting together parts or pieces easily without changing the physical characteristics, quality and reputation thereof.

Question 7: The scope of Article 11 is very broad. What is the reason for requiring importers to declare royalties and licence fees paid in any form? What can the importer do when it is not possible to provide objective and quantifiable data at the time of entry? Would this subject the importer to potential criminal penalties under Article 14?

Reply: Article 11 makes it clear that the importer has the obligation to declare royalties and licence fees paid in any form by the buyer /importers, so that the customs officials could determine accurately in accordance with the relevant Articles of the Decree 102 whether royalties and licence fees would be dutiable or not. If it is not possible to provide objective and quantifiable data at the time of import, the importers should explain to customs officers the reason why he could not provide the objective and quantifiable data and when he could be able to do so. If the buyer/importer violates the regulations under Article 14 in the import declaration, it would be subject to criminal penalties.

Question 8: In what situations would a violation of the royalty regulations constitute a crime pursuant to Article 14?

Reply: The consignee of imported goods who violates the said regulations by failing to present accurate declaration, or submitting false, fictitious or fraudulent declaration of royalties or licence fees, shall be punished by the Customs in accordance with *the Customs Law of the People's Republic of China* and *the Implementing Regulations on Imposing Administrative Penalties under the Customs Law of the People's Republic of China*. Where the violation constitutes a crime, the importer/consignee concerned shall be subject to criminal liability in accordance with the relevant Law.

Question 9: Can China include examples in their regulations or policy directives of royalty payments that would not be included in the customs value?

Reply: China adopts the system of statute law, where cases can not be the basis of law enforcement. The specific cases of the advisory opinions or certain judicial cases can only be used as reference in determining whether the payments of R/L should be included in the customs value or not. China Customs is now introducing "Administrative Rulings" to help the customs officers in determining the conditions on which the R/L should be added to the customs value.

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