

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Checklist of Issues

Addendum

India

At its meeting held on 5 May 1981, the Committee on Customs Valuation decided, inter alia, that Parties should reply in writing to the points contained in the revised checklist of issues relating to the national legislation on customs valuation. At its meeting of 13 December 1985, the Committee agreed that questions 14 and 15 be added to the checklist.

The reply submitted by the delegation of India is reproduced hereunder.

Relevant Sections of
the Indian Customs
Act 1962/Customs
Valuation Rules 1988¹

1. Questions concerning Article 1

(a) Sales between related persons:

(i) Are sales between related persons subject to special provisions?

Answer: No

Rule 4(3)

(ii) Is the fact of intercompany prices prima facie considered as grounds for regarding the respective prices as being influenced?

Answer: No.

(iii) What is the provision for giving the communication of the aforementioned grounds in writing if the importer so requests?

Answer: There is no specific provision in the rules. However, an administrative procedure exists for communication of such grounds by issue of appealable orders, if the importer so requests. The declaration form also contains provisions for communicating to the importer in writing the method of valuation applied.

Declaration form

¹Circulated in VAL/1/Add.24, dated 11 October 1988.

(iv) How has Article 1.2(b) been implemented?

Answer: In a sale between related persons, the transaction value is accepted whenever the importer demonstrates that the declared value closely approximates to one of the following values:

Rule 4(3)

(i) the transaction value of identical goods or of similar goods, in sales to unrelated buyers in India.

(ii) the deductive value for identical or similar goods.

However, Article 1(2)(b)(iii) has not been implemented as India has opted to delay its application in terms of Article 21(2) of the Agreement.

(b) Price of lost or damaged goods

(i) Are there any special provisions of practical arrangement concerning the valuation of lost or damaged goods?

Answer: Yes

The importer is not liable to pay duty on goods lost at any time before clearance for home consumption in terms of Section 23 of the Customs Act 1962. Damaged goods are valued based on their damaged condition in accordance with the provision of Section 22 of the Customs Act.

Section 22 and 23
of the Customs Act

2. How has the provisions of Article 4 to allow the importer an option to reverse the order of application of Articles 5 and 6 been implemented?

Answer: In terms of Article 21(2) of the Agreement India has deferred the application of Article 6. Allowing the option for reversal of application of Article 5 and 6 does not, therefore, arise at this stage.

3. How has Article 5.2 been implemented?

Answer: India has entered reservation in terms of paragraph 5 of the Protocol to the Agreement. Article 5.2 shall be applied in accordance with the provision of relevant note thereto whether or not the importer so requested.

Rule 7(3)

4. How has Article 6.2 been implemented?

Answer: India has deferred the application of Article 6 in terms of the reservation under Article 21(2) of the Agreement.

5. Questions concerning Article 7

(a) What provisions have been made for making value determinations pursuant to Article 7?

Answer: There is no special provision since the text of the Agreement has been incorporated in the Valuation Rules.

Rule 8

(b) What is the provision for informing the importer of customs value determined under Article 7?

Answer: There is an administrative procedure for informing the importer of the method used for determination of the value under Article 7, if the importer so requests. Appealable orders are also issued in such cases.

(c) Are the prohibitions found in Article 7.2 delineated?

Answer: Yes. These are incorporated in Rule 8(2) of the Customs Valuation Rules.

Rule 8(2)

6. How have the options found in Article 8.2 been handled?

Answer: India has provided valuation of imported goods on CIF basis. All the elements mentioned in Article 8.2 have been included in the Valuation Rules. However, a provision has been made to deem the total cost of the charges referred to in this Article when they are not ascertainable. This is based on the costs normally incurred and is purely a facilitation measure. In the case of air consignments an upper ceiling has also been specified for these charges even if they are ascertainable in order to reduce the duty burden on account of higher air freight.

Rule 9(2)

7. Where is the rate of exchange published, as required by Article 9.1?

Answer: Section 14 of the Customs Act 1962 contains a provision that the price of imported goods shall be calculated with reference to the rate of exchange as determined by the Central Government on the date on which a bill of entry (entry form) is presented. The rates of exchange are notified by the Government of India in the Official Gazette. These notifications are also reproduced in Public Notices issued by the Customs Department.

Section 14 of the
Customs Act

8. What steps have been taken to ensure confidentiality, as required by Article 10?

Answer: Provisions already exist in sub-section 3 of section 136 of the Customs Act, which prohibit the disclosure of information acquired in the official capacity to other persons or firms.

Section 136 of the
Customs Act

9. Questions concerning Article 11

(a) What rights of appeal are open to the importer or any other person?

Answer: Chapter XV of the Customs Act lays down elaborate provisions for filing of appeals against decisions or orders passed under the Act. This applies to valuation decisions also. First appeal is to the Collector (appeals) and the second appeal to a Tribunal which is an independent judicial authority. Appeals against decisions of the Tribunal lie to the Supreme Court of India.

Chapter XV
(Section 128 to
131) of the
Customs Act

(b) How is he to be informed of his right to further appeal?

Answer: The importers right to further appeal and the procedure to be adopted for the purpose is explicitly brought out in the preamble to the order in an appeal passed by the appellate authority and from whose order there is a right to further appeal.

10. Provide information on the publication, as required by Article 12, of:

(a)(i) the relevant national laws

Answer: The amendments to the Customs Act as passed by Parliament are published in the Official Gazette, which is available to the public.

(ii) the regulations concerning the application of the Agreement.

Answer: The Customs Valuation rules are notified in the Official Gazette which is available to the public.

(iii) The judicial decision and administrative rulings of general application relating to the Agreement.

Answer: Judicial Rulings are published in the law journals. Administrative Rulings are notified through Public Notices by the Customs Department.

(iv) General or specific laws being referred to in the rules of implementation or application.

Answer: Not applicable.

(b) Is the publication of further rules anticipated? Which topics would they cover?

Answer: No.

11. Question concerning Article 13

(a) How is the obligation of Article 13 (last sentence) being dealt with the respective legislation?

Answer: Section 18 of the Customs Act provides for provisional release of the goods on the furnishing of security as deemed fit by the proper officer for payment of the deficiency, if any, between the duty finally assessed and duty provisionally assessed.

Section 18 of the
Customs Act

(b) Have additional explanations been laid down?

Answer: No.

12. Questions concerning Article 16

(a) Does the respective national legislation contain a provision requiring customs authorities to give an explanation in writing as to how the customs value was determined?

Answer: The Customs Act or the Valuation Rules do not contain any specific provision requiring the Customs Department to give a written explanation. However, as an administrative measure, the Customs Department (the Assessing Officer) issue an appealable order whenever the importer so requests. This order would incorporate the consideration on which the Customs value has been determined in that case.

(b) Are there are further regulations concerning the above-mentioned request?

Answer: No.

13. How have the Interpretative Notes of the Agreement been included?

Answer: The relevant portion of the Interpretative Notes have been included in the Customs Valuation Rules as a Schedule and in terms of Rule 12 of the Valuation Rules they shall apply for interpretation of the Rules.

Rule 12 and
Schedule

14. How have the provisions of the decision of 26 April 1984, on the treatment of interest charges in the customs value of imported goods been implemented?

Answer: The implementation of this decision is being examined and the decision taken in this regard will be communicated separately.

15. For those countries applying paragraph 2 of the Decision of 24 September 1984, on the valuation of carrier media bearing software for data processing equipment, how have the provisions of this paragraph been implemented?

Answer: The implementation of this decision is being examined and decision taken in this regard will be communicated separately.