

### **Q1 What is Customs Value?**

Ans: Customs Value means the value of goods for the purposes of levying ad valorem duties of customs.

### **Q2 What are ad valorem duties?**

Ans Ad valorem duties of customs are duties levied according to the value of goods and are usually expressed as percentages of value. Such duties are distinct from specific measures of goods such as number, weight, volume, area, capacity etc. There can also be composite duties that are partly ad valorem and partly specific. Customs tariff of a country indicates what kind of duties are levied on different kinds of goods. However, barring exceptions, most countries generally levy customs duties on ad valorem.

### **Q3 Is it necessary for an importer to declare the value of imported goods to customs and what evidences does he/she need to produce in support of the declaration?**

Ans Yes, an importer or an authorised agent needs to declare the value of imported goods as a part of goods declaration at the customs entry point along with a supported invoice. Many countries also require a separate valuation form to be filled either in respect of each consignment or in respect of a series of consignment imported over a period. Besides, customs officials may also require additional documents and information in a particular case as in the case of related party sales etc or where they have a doubt regarding the truth accuracy of the declaration.

### **Q4 Should an importer declare a value for goods that are exempted from customs duty or are subject to specific duties?**

Ans Yes, as most countries require a declaration of value of all imported goods for compilation of trade statistics. Some countries may also require such a declaration for tariff quota, import licensing or exchange control purposes.

## **INTERNATIONAL RULES ON CUSTOMS VALUATION**

Q5 Are there any rules for customs valuation that are accepted world-wide?

Ans Customs value of imported goods has to be determined in accordance with the national laws of a country. However, in the case of a WTO Member country, its national laws on customs valuation have to be based on the following WTO instruments:

- Article VII of the General Agreement on Tariffs and Trade (GATT), 1994 (see Appendix I)
- The Agreement on Implementation of Article VII of the GATT, 1994 (Usually referred to as the Agreement on Customs Valuation or ACV for short-see Appendix II) and
- The Uruguay Round Ministerial Decision Regarding Cases where Customs Administrations have Reasons to Doubt the Truth or Accuracy of the Declared Value, which has been subsequently adopted as a Decision of the WTO Committee on Customs Valuation (see Appendix III)

Q6 How soon is a WTO Member country required to implement the ACV?

Ans Normally as soon as a country becomes a Member are allowed to delay the application of the ACV for up to 5 years from the date on which they join the WTO.

Q7 Are there any other systems of customs valuation?

Ans Yes, the national laws for customs valuation in some countries still follow the Brussels Definition of Value (BDV) based on the 1953 Convention on the Valuation of Goods for Customs purposes.

Q8 What is the essential difference between the BDV system of valuation and the valuation system under the ACV?

Ans The former is based on the national concept of an idea or normal value that a good would fetch in the open market whereas the latter is based on a positive concept relying more on the actual price paid payable for the good being valued.

## **PRINCIPLES AND METHODS OF CUSTOMS VALUATION**

Q9 What are the GATT principles of customs valuation?

Ans Article VII of the GATT, 1994 lays down the main principles of customs valuation. Customs value should not be arbitrary, fictitious or based on value of indigenous goods. It should be real and based on the actual value of goods under import or of like goods. It should also derive from a sale or offer of sale in the ordinary course of business under fully competitive conditions. If the actual value is not ascertainable, the customs value should be based on the nearest ascertainable equivalent of such value. The ACV contains provisions to implement these principles.

Q10 What are the different methods of customs valuation allowed under the ACV?

Ans The preamble to the ACV recognises that, to the greatest extent possible, the basis of customs value should be the transaction value. However, in all, it provides for 6 methods of valuation to be applied in the following order:

1. The Transaction Value Method
2. Comparative Value Method based on Transaction Value of Identical Goods
3. Comparative Value Method based on Transaction Value of Similar Goods
4. Deductive Value Method based on subsequent sale price in the importing country
5. Computed Value Method based on cost of materials, fabrication and profit in the country of production, and
6. Fallback Method based on previous methods with greater flexibility

These methods require to be applied in the given sequence, starting with the first. Only when specified earlier in the sequence cannot be applied, can recourse be taken to the next method in the sequence.

Q11 Can the sequence be altered?

Ans Article 4 of the ACV allows an importer to request reversal of the order of application between the Deductive Value Method and the Computed Value Method. However, the developing countries are allowed to make a reversion to the effect that such reversal will be subject to approval by customs authorities.

## TRANSACTION VALUE METHOD

Q12 What is the principal method of valuation under the ACV?

Ans The principal method of valuation under the ACV is the transaction value method.

Q13 Transaction value is the price actually paid or payable for the goods when sold for export to the country of importation. It needs to be adjusted by valuation factors, which are separately discussed below.

Q14 What is meant by 'price actually paid or payable'?

Ans The 'price actually paid or payable' represents the total payment made or to be made by the buyer. The payment may be made not only in the form of transfer of money, but also by way of letters of credit or negotiable instruments. Payment may also be made directly or indirectly. An example of indirect payment is settlement by the buyer of a debt owed by the seller. A commercial invoice usually reflects the total payment made. However, if it understates or overstates the price, or if it is misleading or fraudulent, it cannot provide a valid basis for determining the transaction value.

Q15 Are the customs officers bound to accept the value declared by the importer as the customs value in all cases?

Ans The ACV requires that the customs value should be based on the transaction value to the greatest extent possible. However, application of the transaction value method is subjected to:

- Customs authorities being satisfied with the truth and accuracy of the declared value
- Compliance with the valuation conditions; and
- Availability of objective and quantifiable data with regard to the valuation factors for making adjustment to the price actually paid or payable

In the event of the transaction value method not being applicable, customs value has to be determined by another method in the hierarchical order as listed in answer to Q10.

Q16 What procedure should be followed if the customs officer has reasons to doubt the truth or accuracy of the declared value?

Ans When a declaration is made and the customs officer has reason to doubt the truth or accuracy of the particulars or of documents produced in support of

this declaration, the customs officer may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted by the valuation factors. If after receiving further information, or in the absence of a response, the customs officer still has reasonable doubts about the truth or accuracy of the declared value, it may be deemed that the customs value of the imported goods cannot be determined by the transaction value method. Before making a final decision, the customs officer shall communicate to the importer, in writing, if requested, the grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the customs officer shall communicate to the importer the decision and the grounds therefor in writing.

Q17 What are the valuation conditions?

Ans The transaction value method can be applied if the following valuation conditions are met:

- i. There should be evidence of a sale for export to the importing country. Such evidence may be in the form of commercial invoices, sale contracts, purchase orders etc
- ii. There should not be restrictions on the disposition or use of the goods by the buyer than restrictions which:
  - a. Are imposed or required by law or by public authorities in the importing country e.g licence, end-use etc
  - b. Limit the geographic area in which the goods may be resold; or
  - c. Do not substantially affect the value of the goods, e.g restrictions on selling or exhibiting automobiles prior to a fixed date which represents the beginning of a model year.
- iii. The sale or price should not be subject to conditions or considerations for which a value cannot be determined in respect of the goods being valued. For example, transaction value will not be accepted if the seller fixes the price of the imported goods subject to the buyer buying other goods in specified quantities. Similarly, transaction value will not be acceptable if the price is established in the form of payment extraneous to the imported goods, such as where the seller provides semi-finished goods subject to the condition that he/she will receive a specified quantity of finished goods.
- iv. No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer should accrue directly or indirectly to the seller,

- unless an appropriate adjustment can be made. There should be sufficient information for making adjustment of such proceeds.
- v. The buyer and the seller should not be related. The transaction value can still be accepted if:
- a. The relationship has no influence on the price paid or payable; or
  - b. The importer demonstrates that the transaction value closely approximates any of the test values (transaction value, deductive value or computed value of identical or similar goods) ascertained at or about the same time in respect of sale to unrelated buyers in the importing country.

Q18 What are the valuation factors?

Ans Valuation factors are the various element which must be taken into account in determining the customs value. The dutiable factors are to be added whereas the non-dutiable factors are to be deducted to compute the customs value. These are listed below:

#### Dutiable Factors

- Commissions and brokerage, except buying commissions;
- The cost of containers which are treated as being one for customs purposes with the goods in question;
- The cost of containers which are treated as being one for customs purposes with the goods in question;
- The cost of packing whether for labour or materials;
- 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 the imported goods, to the extent that such value has not been included in the price actually paid or payable.
  - Materials, components, parts and similar items incorporated in the imported goods;
  - Tools, dies, moulds and similar item used in the production of the imported goods;
  - Materials consumed in the imported goods and
  - Engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the importing country and necessary for the production of imported goods.
- Royalties and licence fees related to goods being valued that the buyer must pay either directly or indirectly, as condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

- The value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues directly or indirectly to the seller, and
- Advance payments made earlier but not reflected in the invoice.

#### Non Dutiable Factors

- All discounts except retrospective discounts
- The following charges, provided they are separately declared in the commercial invoice:
  - Interest charges for deferred payment
  - Post-importation charges such as inland construction, erection, assembly etc, undertaken after importation and
  - Duties and taxes payable in the importing country

Q19 Should the customs value include charges towards freight, insurance, loading, unloading and delivery?

Ans The importing country has the option under the ACV to provide in its national legislation for the inclusion in or the exclusion from the customs value the following:

- Freight charges up to the place of importation
- Loading, unloading and handling charges associated with transport of the goods to the place of importation; and
- The cost of insurance

As such, inclusion or exclusion of these charges will depend on the law of each importing country. When these charges are included, customs value is based on the CIF (Cost, Insurance, Freight) price and when these charges are excluded, the customs value is based on the FOB (Free On Board) price. CIF and FOB are two of the thirteen INCOTERMS 2000 developed by the International Chamber of Commerce to accurately describe the responsibilities of the seller and the buyer in any international transaction.

Q20 Should the customs value include charges for pre-shipment inspection?

Ans Charges for pre-shipment inspection are normally incurred by the importer or by the government of the importing country. Such inspection may have been undertaken as per the importing country's policy or as per the importer's own requirement. The charges are neither paid to the buyer nor paid for his benefit. As such, such charges should not be added to the customs value.

Q21 Customs duty is often collected in the currency of the importing country, whereas the price of the imported goods may be invoiced in a foreign currency. In such a case, how is the customs value to be calculated?

Ans Article 9 of the ACV provides that where the conversion of currency is necessary for determination of customs value, the rate of exchange duly published by the competent authorities of the country of importation is to be used. The same is required to reflect as effectively in commercial transactions. It is also provided that the conversion rate should be as at the time of exportation or at the time of importation as specified by each importing country. The interpretative note to this includes the time of entry for customs purposes.

## **OTHER METHODS OF CUSTOMS VALUATION**

Q22 When can one apply the method of valuation based on the transaction value of identical goods?

Ans The method of valuation based on transaction value of identical goods can be used when the transaction method fails or is not applicable and when transaction value of identical goods imported at or about the same time is available.

Q23 What are identical goods?

Ans Identical goods have been defined in the ACV as goods that are:

- i. The same in all respects including physical characteristics, quality and reputation;
- ii. Produced in the same country as the goods being valued, and
- iii. Produced by the producer of the goods being valued

Minor differences in appearance which do not affect the value would not preclude goods which otherwise conform to the definition from being considered as identical goods. Where identical goods produced by the same producer are not available, identical goods produced by a different producer can be considered.

The definition of identical goods excludes imported goods for which engineering, development, artwork, design work, plans or sketches are undertaken in the country of importation and are provided by the buyer to the producer of the goods free of charge or at a reduced cost.

Examples of identical goods are steel sheets of identical chemical composition, finish and size, imported for automobile bodies in one case and

for furnace lining in another, wallpaper imported by interior decorators and wholesalers etc.

Q24 When can one apply the method of valuation based on the transaction value of similar goods?

Ans The method based on transaction value of similar goods is to be applied if the transaction value method and the method based on the transaction value of identical goods fail or do not apply. Similar goods used in this method should have been imported at or about the same time as the goods being valued.

Q25 What are similar goods?

Ans Similar goods have been defined in the ACV as goods which:

- i. Closely resemble the goods being valued in terms of characteristics and component materials;
- ii. Can perform the same functions and are commercially interchangeable with the goods being valued;
- iii. Are produced in the same country as the goods being valued; and
- iv. Are produced by the producer of the goods being valued.

Where similar goods are produced by the same producer are not available, similar goods produced by a different producer can be considered.

The definition of similar goods excludes imported goods for which engineering, development, artwork, design work, plans or sketches are undertaken in the country of importation and are provided by the buyer to the producer of the goods free of charge or at reduced cost.

An example of similar goods is interchangeable rubber tubes imported from two different producers with different trademarks but of the same standard quality and equivalent reputation as well as similar characteristics, components and functions for use by motor vehicle manufacturers. Normal grade sodium peroxide for bleaching and special grade pure sodium peroxide for analytical purposes are not similar goods as they have different specifications and are not interchangeable.

Q26 What adjustments have to be made while adopting values of identical or similar goods?

Ans The transaction values of identical or similar goods have to be adjusted upwards or downwards if there are differences between the goods being valued on the one hand and the identical or similar goods on the other in order to take account of:

- i. Commercial level differences;

- ii. Quantity differences; and
- iii. Significant differences in the transport costs, insurance charges etc, due to variance in mode of transport and distance.

Q27 Which value is to be used if there are a number of transaction value of identical or similar goods?

If there is more than one transaction value of identical or similar goods , the lowest of such values has to be used.

Q28 When can one apply the deductive value method and what are its salient features?

Ans The deductive value method comes next in the hierarchy of valuation methods to be applied where the ones described earlier fail. By this method, the value for assesment is determined on the basis of sales in the country of importation of the goods being valued or of identical or similar imported goods, less certain specified expenses resulting from the importation and sale of the goods.

The sale in the country of importation should satisfy the following conditions;

- i. The goods have been resold in the same condition as imported
- ii. Sales of the goods have taken place at or about the time of importation of the goods being valued.
- iii. If there are no sales at or about the time of importation, sales made at the earliest date, but not later than 90 days, after importation of the goods being valued can be used;
- iv. If there are no sales or identical or similar imported goods in the same condition as imported, sales of goods being valued after further processing can be used and
- v. The purchaser must not be related to the seller in the country of importation.

The unit price at which the grastest number of units is sold must be found. Deductive value is determined by deducting from such unit price the following:

- Commissions usually paid or profits and general expenses usually added for sale in the country of importation goods of the same class or kind;
- Usual transport, insurance and other associated costs incurred within the country of importation;
- Customs duties and other taxes payable in the country of importation on import and sale; and
- Value added by processing when applicable.

Q29 When one can apply the computed value method and what are its salient features?

Ans The computed value method is the next method of valuation in the hierarchical sequence. However, there is a provision for reversing the sequence of application of the computed value method with that of deductive value method at the option of the importer.

Under this method, the value for assesment is based on computed value which shall be the sum of:

- The cost of materials, fabrication and processing
- An amount for profit and general expenses for sales of goods of the same class or kind in the country of exportation for export to the country of importation and;
- The cost of transport, insurance, and loading, unloading and handling charges if these are required to be added to the customs value under the law in the importing country.

The use of this method will be generally limited to those cases where the buyer and the seller are related, and the producer is prepared to supply the necessary costing and facilities for subsequent verification to the customs authorities in the country of importation. Under paragraph 2 of Article 6 of the ACV, the information supplied by the producer can be verified by the customs authorities of the importing country in another country only with the agreement of the producer and only if the government of that country does not subject to such investigation.

Q30 When can one apply the fallback method and what are its salient features?

Ans When customs value cannot be determined under any of the other methods of valuation, the same has to be determined applying those methods in a flexible manner and in accordance with the principles and general provisions of Article VII of GATT, 1995, on the basis of data available in the country of importation.

The value of imported goods determined under this method should be based on previously determined customs values to the extent possible. Since this method allows a flexible approach, some of the requirements under the earlier methods can be flexibly interpreted. For example, the value of identical and similar goods produced in other countries can be used. The requirement of identical and similar goods imported at or about the same time can be flexibly interpreted. The requirements of goods being sold in the condition as imported and the 90 days period under the deductive value method can be flexibly interpreted.

In applying the fallback method, if more than one of the previous methods can be applied flexibly, the normal sequence for using those methods should be taken into account.

Q31 Are there any restrictions under the fallback method in using some value standard?

Ans Under the fallback method, it is not permissible to base the value on:

- The selling price in the country of importation of goods produced in such country;
- The higher of two alternative values;
- The price of goods in the domestic market of the country of exportation;
- The price of goods for export to a country other than the country of importation;
- Minimum customs values; or
- Arbitrary or fictitious value.

Q32 Are there any provisions in the ACV for applying minimum values?

Ans Paragraph 2 of Annex III to the ACV provide that developing countries, which currently value goods on the basis of minimum values, may retain such values on a limited and transitional basis subject such terms as agreed to by the WTO Members.

## **RELATED PARTY TRANSACTIONS**

Q33 Who are related persons?

Ans Article 15 of the ACV defines related persons. Persons are deemed to be related only if:

- They are officers or directors of one another's businesses;
- They are legally recognised partners in business;
- They are employer and employee;
- Any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- One of them directly or indirectly control a third person; or
- They are members of the same family.

Q34 Does the term 'persons' include legal persons?

Ans Yes.

Q35 Can sole agents, sole distributors and sole concessionaires be deemed to be related?

Ans No, unless they satisfy one of the definitions above, they cannot be considered as related.

Q36 When can a person be deemed to control another?

Ans A person can be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the other.

Q37 Who can be considered as members of the same family?

Ans The ACV contains no guidelines in this regard, However, subject to domestic laws of the importing country, the following can be considered as members of the same family:

- Husband and wife
- Parent and child
- Brother and sister
- Brothers
- Sisters
- Grandparent and grandchild
- Uncle and nephew
- Uncle and niece
- Brothers-in-law
- Sisters-in-law
- Brother-in-law and sister-in-law
- Parent-in-law child-in-law

Q38 Can the transaction value be accepted as the customs value in a sale between related person?

Ans Normally, the transaction value can be accepted as the customs value provided the buyer and the seller are not related. However, transaction value between related buyer and seller can be accepted:

- i. If the circumstances of the sale have been examined and it is found that the relationship did not influence the price; or
- ii. If the importer demonstrates that the transaction value closely approximates one of the 'test' values.

Q39 What are 'test' values?

Ans The 'test' value can be either the transaction value of identical similar goods in sale to unrelated buyers in the importing country or the deductive value or computed value for identical or similar goods. The 'test' values are to be used at the initiative of the importer and are not to be used as substitute values. The transaction value itself has to be accepted as customs value so long as it closely approximates one of the 'test' values.

Q40 What are transfer prices?

Ans Recent trends in world trade show increasing international transfer of goods between trans-national companies (TNCs) and their overseas affiliates and branches. Prices indicated for such transfer of goods are known as transfer prices. Transfer prices should be determined using any of the recognised methods in such way that is acceptable to customs and tax authorities in both the importing and the exporting countries.

Q41 Can transfer prices be accepted as customs value?

Ans When there is a transfer of goods between a TNC and its overseas branch having no separate legal status of its own, such a transfer cannot be termed as a sale. Therefore, the transfer price in such a case cannot form a basis of valuation under the transaction value method and consequently, valuation has to be done using another method. In the case of a sale of goods between a TNC and its overseas affiliate having a separate legal status, it is likely that the sale would be in the nature of a related party transaction and should be treated as such.

### **SPECIAL VALUATION ISSUES**

(WITH PARTICULARLY EMPHASIS ON ISSUES RELATING TO DEVELOPING COUNTRY SITUATIONS)

Q42 What constitutes sale for the purpose of customs valuation?

Ans The ACV contains no definition of 'sale'. However, the term 'sale' has to be interpreted in the widest sense, keeping in view the provisions contained in Articles 1 and 8 of the ACV. The Technical Committee on Customs Valuation has prepared a list of cases that would not be deemed to constitute 'sales' meeting the requirements and conditions of Article 1 and 8 of the Code. In such cases, one of the methods other than the transaction

value method has to be applied proceeding sequentially. The list is not exhausted:

- i. Free consignments: Where transactions do not involve payment of any price, they cannot be regarded as sales. Examples of such transactions are gifts, samples, promotional items.
- ii. Goods imported on consignment: Under this arrangement the goods are imported not as a result of sale but subsequent sale on the account of the supplier. As such, there is no sale on the time of importation. Importation on consignment for subsequent auction sale is an example of such transaction. Such importations on consignment are to be distinguished from profit-sharing transactions. In the case of the latter, the goods are sold provisionally at a price to which part of the profit arising out of subsequent sale in the country of importation has to be added.
- iii. Goods imported by intermediaries who do not produce the goods: Under this arrangement, goods are delivered to an intermediary who imports the same, acting as an agent of the supplier, and sells it later on, on the supplier's account and risk. Importation for replenishment of the agency stocks is an example of such transaction.
- iv. Goods imported by branch: Where branches are not separate legal entities, the importation by branches cannot be regarded as sale. Sale necessarily involves a transaction between two separate persons.
- v. Goods imported under hire or lease: Transactions on hire or lease do not constitute sales, even if an option is included in the contract to purchase the goods.
- vi. Goods supplied on loan: Often, machinery is loaned by the owner to a customer. Such transactions do not constitute sale.
- vii. Goods (waste and scrap) imported for destruction: In such transaction, the importer does not pay for the imported goods. On the other hand, the exporter pays the importer to accept and destroy such goods. Such transactions will also not constitute sale under the ACV.

Q43 How are barter deals to be treated for valuation purposes?

Ans Barter deals consist of an exchange of goods for services for approximately equal value. The barter may or may not be settled in monetary terms. In the absence of objective or quantifiable data for determining the value, hence, methods other than the transaction value method have to be applied. In the latter case also where a barter transaction is expressed in monetary terms, the same will be subject to the provisions of Article 1, paragraph 1(b) of the ACV. Here again, application of a method other than the transaction value method will be appropriate.

Q44 How are baggage items to be valued?

Ans Valuation of articles imported by a passenger for a crew member in his/her baggage cannot be done using the transaction value method when importation of baggage articles may not involve any sale. Valuation of such goods has to be generally done using available values for identical or similar articles.

Q45 How are the commercial level and quantity adjustments to be done?

Ans Under the ACV, adjustments are required to be made to take account of demonstrated differences commercial level and quantity in respect of:

- i. Test values
- ii. Identical goods and
- iii. Similar goods

Under Articles 1.2(b), 2.1(b) and 3.1(b) of the ACV.

If commercial levels and quantities are comparable, no adjustments are required to be made. If commercial levels and/or quantities are different but the price is not affected by such differences, then also no adjustments are required to be made. Only when price is affected by such differences are adjustments to be made based on demonstrated evidence, which clearly establishes reasonableness and accuracy. If this requirements cannot be made, adjustments cannot be made consequently these methods of valuation cannot be used. Wholesalers and retailers constitute two different commercial levels.

Q46 What is meant by the expression "greatest aggregate quantity"

Ans This expression occurs in Article 5 of the ACV in the context of determination of customs value by the deductive value method. The expression means the greatest number of units, which are sold at particular price. For examples, please see the Note to Article 5 of the ACV in Appendix II.

Q47 What is mean by the expression "greatest aggregate quantity"?

Ans The expression "goods of the same class of kind" is defined in the ACV as goods which fall within a group, or range of goods, produced by a particular industry or industry sector, including identical and similar goods. The expression is relevant for determination of deductive value as well as computed value. However, in the case of deductive value, goods imported from the same country as well as from the other countries can be considered, whereas in the case of computed value, goods from the same country can only be considered.

Q48 What is an assist?

Ans Assist is a term used to describe any of the following goods or services supplied free or at a reduced cost by the buyer for use in the production of the imported goods:

- a. Materials, components, parts and similar items incorporated in the imported goods
- b. Tools, dies, moulds and similar items used in the production of the imported goods
- c. Materials consumed in the production of imported goods
- d. Engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods.

These assists are listed in Article 8.1(b) of the ACV. Value of such assists, apportioned as appropriate, has to be added to the price actually paid or payable, whether these are directly supplied by the buyer or not.

At times, such assists are provided to the supplier of the imported goods by the foreign collaborator of the buyer at the instance of the buyer. In such cases, the price actually paid or payable to the supplier will not include the cost of assists for which the buyer will be making separate payments to be added, after due apportioning, to the price actually paid or payable for the imported goods for determination of the customs value.

Q49 What is buying commission and how is it to be treated for valuation purposes?

Ans A buying agent acts on behalf of a buyer, finding a seller, collecting samples, inspecting goods and in some cases arranging the transport, insurance, storage and delivery of the goods. The amount paid to a buying agent for his services is termed as buying commission, which is paid by the importer in addition to paying for the goods. Article 8(1)(a)(i) of the ACV specifically excludes buying commissions from being added to the price actually paid or payable while determining the customs value.

Sometimes buying agents act as principals in the sense that they use their own funds for the payments of the goods and after acquiring the ownership they resell the goods to the ultimate buyer in the country of importation, raising an invoice in their own names. In such cases, the so-called buying agent becomes the actual seller of the goods and the sale price would include the agent's commissions and profits. While there is a provision in the ACV for not adding buying commissions, there is no provision to permit deduction towards buying commissions in such cases.

In some cases, the buying agent may be under-taking to pay the transport and insurance charges and including the same in his buying commissions. Such charges towards transport and insurance are to be included while determining the customs value if the importing country has opted for CIF basis of valuation.

The agency contract between the buyer and the agent, their relationship, and where the agent re-invoices the buyer, the original invoice from the seller have to be examined carefully.

Q50 What is confirming commission and how is it to be treated for valuation purposes?

Ans A seller may lack confidence in the letter of credit raised by the buyer on the buyer's bank for the payment to be made for the goods sold. He/she may therefore, seek confirmation of the letter of credit from his/her bank or from a confirming house (a specialised commercial house which offers such services) who provide guarantees to the seller against the commercial risk of non-payment by the buyer or his/her bank. The fee charged for such services is called confirming commission. Amount towards such commission may have been directly included by the seller in the invoice price. There may be cases where the seller separately invoices the buyer for the confirming commission or the confirming institution itself directly sends an invoice to the buyer. In such cases, confirming commissions paid by the buyer to the seller or to a third party have to be added to the price actually paid or payable for determining the customs value.

In some cases, a buyer may undertake on his/her own accord to provide a seller with an irrevocable and confirmed letter of credit. For such deals, the buyer has pay necessary charges to the confirming institutions. When such charges are incurred by the buyer without there being any condition imposed in the contract for sale, such charges should not be added to the price actually paid or payable for valuation purposes.

Q51 How are discounts to be treated for valuation purposes?

Ans Since the price actually paid or payable is the primary basis of valuation under the ACV, actual price exclusive of trade discounts has to be taken as the basis for determining the customs value. The following discounts can, therefore, be allowed for deduction:

- (i) Cash discount;
  - (ii) Quantity discount;
  - (iii) Discount in kind;
  - (iv) Bonus for purchases exceeding certain quantity;
- and

- (v) Special introductory discount.

When the contract for sale provides for the following discounts, the same may also be allowed for deduction:

- (i) Late shipment allowance;
- (ii) Breakage allowance (for fragile goods);
- (iii) Contractual discount (a kind of quantity discount);
- (iv) Negotiated discount (special discounts justified in the special circumstance of the sale).

There are certain other discounts that require to be examined carefully in the light of the valuation provisions and may have to be disallowed:

- (i) **Discount for brokerage:** This is a form of brokerage or commission when the sale is negotiated through a broker. Such discounts are to be added to the invoice value. However, buying commission is not to be added.
- (ii) **Cash Discount** given to agents of importers in the country of importation : these are special discounts given to sole agents, sole concessionaires etc. When the imports are by third party and the sole agent gets a commission, the same is to be added to the price to determine value. When the import is by the sole agent himself, it is to be seen whether he is related to the supplier and the relation has influenced the price. If so, the discount may not be allowed to be deducted. Otherwise, imports by sole agents have to be treated under the ACV at par with any other normal imports.
- (iii) **Service stocking discount:** This is a discount for allowing storage facility by the importer. This being in the nature of a compensation for some post-importation activity to be undertaken by the importer, the same may not be allowed to be deducted. Moreover, the contract of sale has to be seen in detail to determine whether the transaction value method is at all applicable to such a sale.
- (iv) **Discount on account of loss by exchange:** Such discounts are at times allowed by banks with the concurrence of shippers on account of fluctuation in exchange rates. These are allowed through separate arrangements and are in the nature of compensation outside the sale contract. Therefore such discounts may not be allowed to be deducted while determining the customs value.

Q52 How are retrospective quantity discounts to be treated for valuation purpose?

Ans Quantity discounts are allowed by a seller according to a fixed scheme based upon the quantity of the goods sold over a basic period. Normally these are allowed as deductions from the price according to the quantity sold. Such discounts are to be normally allowed while determining the customs value.

A situation may arise where such discounts are granted retrospectively in respect of importation already made. For example, a seller grants 5% discount on purchase up to 100 units in a year. A buyer receives 5% discount on his first purchase of 100 units. Subsequently, he makes a second purchase of 100 more units on which he receives 10% discount and in addition, another 5% discount retrospectively towards the first purchase. In such a case, 5% additional discount on the subsequent importation cannot be deducted for determining the customs value. Such amounts are in the nature of credits in respect of earlier transaction and as such represent part of the price already paid. Hence, such amounts have to be included in the customs value of the second importation, being part of the price paid or payable. As far as the first transaction is concerned, the same has to be decided separately. In case the same was assessed provisionally, the assessment can be reopened and the value re-determined.

Q53 How are interest charges to be treated for valuation purposes?

Ans There may be a financial arrangement between the buyer and the seller under which the seller allows deferred payment charging an extra amount towards interest. However, the WTO Committee on Customs Valuation has adopted a Decision to the following effect, which provides necessary guidelines:

Charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the customs value provided that:

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement was made in writing;
- (c) where required, the buyer can demonstrate that:
  - (i) such goods are actually sold at the price declared as the price actually paid or payable; and
  - (ii) the claimed rate of interest does not exceed the prevailing rate of interest for such transactions at the time when and in the country where the financing was provided.

The above guidelines apply regardless of whether the finance is provided by the seller, a bank or another natural or legal person. They will also apply whether valuation is done by applying transaction value method or any other method.

The importer should be able to give a copy of the document showing the financial arrangement. It may usually be found in the contract for sale under the 'terms and conditions' clause. Where no such written document exists or where the interest shown is unreasonably high, no deduction may be allowed. It may, however, be noted that the interest rate can be higher if financing is provided in a currency whose exchange rate is subject to high fluctuations and therefore has a higher risk in dealing in the same.

Q54 How are warranty charges to be treated for valuation purposes?

Ans Warranty is a guarantee that the goods will be free from defects. It attaches to the goods and is an integral part of the goods. Payments made for warranty are part of the consideration paid for the goods and therefore are part of the price actually paid or payable.

Q55 How are royalties and licence fees to be treated for valuation purposes?

Ans When the buyer pays a royalty or licence fees related to the imported goods as a condition of sale, the amount has to be added to the price actually paid or payable. Examples are payments in respect of patents trademarks, copyrights etc. The basic requirement for addition of these fees under Article 8.1 (c) of the ACV are:

- (i) such amounts are related to the goods being valued; and
- (ii) the buyer pays these amounts as a condition of sale of the goods being valued.

Payments made by the buyer for the right to distribute or resell the imported goods have to be added to the price actually paid or payable for the imported goods only if such payments are a condition of the sale for export to the country of importation. On the other hand, payments for the right to reproduce the imported goods in the country of importation should not be added to the price actually paid or payable for the imported goods in determining the customs value.

Q56 How is carrier media bearing software to be valued?

Ans Valuation of carrier media such as tapes and discs for data processing equipment (computers) poses the following problem:

- (i) should the price of the medium such as tape and disc alone be taken as the value disregarding the cost of data or instruction (software) recorded on the same; or
- (ii) should the price of the medium, including the cost of data and instructions recorded on the same, be taken as the value.

The problem is peculiar for the reason that essentially the carrier media itself (tape and disc) is liable to duty under the customs tariff whether it is recorded or not. On the other hand, it is the software (data or instructions) recorded on it, which is of primary interest to the importer. In fact, in most cases the software has to be transferred into the memory or database of the importer's own system before the same can be used. In such a case, the medium is used only as a temporary means of storing data. It is also possible for the buyer and the seller to transmit and receive such software through wire or satellite, if such technical facilities are available to them. In such cases, the question of charging customs duty may not arise.

In view of the peculiarity of the problem, the Committee on Customs Valuation has left the choice to the individual countries as to whether they should include the cost of software in the customs value or not. It has further opined that both methods of valuation would be consistent with the ACV.

Q57 How are used and second-hand motor vehicles to be valued?

Ans Motor vehicles may be imported after purchase without any use in between or they may be imported after use. In the former case, there may not be any difficulty in using the transaction value method. Valuation of used motor vehicles can be problematic. In the case of individual import of a vehicle which has been in the personal use of the importer for some time prior to the import, the vehicle may have been purchased either new or in used condition several years back and put to additional use thereafter. In such cases, transaction value method will not be applicable as the vehicle to be valued after importation cannot be regarded for valuation purposes as the same vehicle as when last sold. It will also be difficult to find transaction values of identical or similar vehicles.. even deductive value method can rarely be applied to such individual imports. In most cases, therefore, resource has to be taken to the fallback method under which reasonable means consistent with valuation principles are to be adopted.

In some countries, the value of a used motor vehicle is determined by allowing depreciation for the period of use from the prices of newcars of similar make, model and year of manufacture. If there are any additional fixtures, value of the same are usually added. Adjustments are also made for freight and insurance charges if the domestic law in the country of importation requires valuation to be done on CIF basis.

Q58 How is used machinery to be valued?

Ans Imports of used and second-hand machinery are more common in developing countries, valuation of which can be problematic. Such machinery may be imported after purchase without any further use in between. In such cases, the transaction value method can be applied. However, the machinery may have been further used after the last purchase or the declared value may be doubtful. It may not be possible to find values of identical or similar machines or to determine value by the deductive value method. In such cases, the fallback method has to be applied in a manner consistent with the broad valuation principles. In some countries, value is determined in such cases by allowing depreciation from the prices of new machinery for the period of use. At the same time, appropriate additions are also made for any reconditioning done and fitments made in between.

Q59 How are sub-standard goods, off-grade materials, second, rejects, defectives and scrap to be valued?

Ans The ACV has no special provision for the valuation of these types of goods, imports of which are usually noticed in developing countries. Normally, if there is no doubt about the description of the imported material and the transaction is genuine, valuation can be done by the transaction value method. However, at times, prime goods are mis-declared or customs officers entertain a reasonable doubt about the truth and accuracy of the declared value. In such cases, one of the other methods of valuation has to be adopted. Usually it is difficult to find goods which are identical or similar to such goods. In this case of scrap, some varieties are at times graded according to international specifications developed by the concerned trade associations and it may be possible to find comparable goods of same specification. The deductive method of valuation can be used where such goods imported by traders are resold after importation. Where no other methods apply, resource has to be taken to the fallback method.

Q60 How are damaged goods to be treated for valuation purposes?

Ans There may be cases where the entire shipment is found to be totally damaged upon importation. Normally, national legislation provides for re-exportation, abandonment or destruction of the damaged goods without any duty liability and hence there would be no need for valuation in such cases. There may be cases where the importer takes delivery of goods that are partially damaged or goods having scrap value only. In such cases, since the price paid or payable is not for the damaged goods, the transaction value method is not applicable. However, if only a portion of the goods is damaged, it may be possible to proportionately value the portion of the

undamaged goods based on the transaction value. For the damaged goods, the value may be determined either under the deductive value method or under the fallback method as the other methods may not be applicable. Under the deductive value method, the resale price may be used as the basis of valuation. Whereas under the fallback method, the basis can be either a renegotiated price or the original price reduced by an amount equal to an estimate of damage or cost of repair or insurance settlement.

Q61 How are wrongly supplied goods and goods not in accordance with specification to be valued?

Ans If such goods are re-exported without any duty liability, valuation may not be necessary. However, if such goods are retained by the buyer, valuation would be necessary. In the case of wrongly supplied goods, transaction value method will not apply and valuation has to be done by applying one of the other methods. In the case of goods not conforming to the specifications in the original purchase order, there may be situations where the seller may take steps to bring the goods into conformity or may render some compensation to the buyer extraneous to the goods. In such cases, it may be possible to value the goods using the transaction value method.

Q62 How are replacement goods to be valued?

Ans The replacement goods may be invoiced free of charge or invoiced at the original price with an arrangement for giving credit for the original goods. In either case, the replacement goods are to be valued at the original price. The first shipment has to be considered separately.

Q63 How are excess goods packed free of charge to be valued?

Ans For certain types of goods, it is the trade practice to pack excess goods free of charge as replacements articles that may be damaged in transit. In such cases, the sale price should be deemed to cover the total quantity shipped and no separate value should be determined for the excess goods supplied free of charge.

Q64 How are rented or leased goods to be treated for valuation purposes?

Ans Hire or leasing transactions do not constitute sales, even if the contract allows an option to purchase the goods. Therefore, in such cases the transaction value method cannot be applied and resource has to be taken to other methods of valuation.

Q65 How are goods exported for repairs to be valued when imported after repairs?

Ans Hire or leasing transactions do not constitute sales, even if the contract allows an option to purchase the goods. Therefore, in such cases the transaction value method cannot be applied and resource has to be taken to other methods of valuation.

Q66 How are split consignments to be assessed?

Ans Split consignments relate to one transaction between the buyer and the seller but imported through several consignments. Such cases arise in the following instances :

- (i) The goods constitute a complete industrial plant. The consignments are split up for convenience in transport, keeping in view the installation schedule.
- (ii) The total import is of a large quantity and the same is conveniently shipped in several consignments keeping in view the requirement over a period of time.
- (iii) The shipments are split because the importer wants the goods delivered through different ports.

In the first case, some countries may have a provision for charging one rate of duty for all the goods imported under a single project import contract. There may, however, be cases where the imports under a single project contract may take a long time for completion and the duty rates applicable may undergo a change. In such cases, separate valuation of split consignments becomes necessary. Separate valuation also becomes necessary for currency conversion as the rate of exchange applicable on the date of entry for each split consignment is relevant. Therefore, the whole project assessment should be done on a provisional basis, apportioning the total value to each consignment in a reasonable manner, subject to final adjustment and assessment at the conclusion of all the imports.

In the second case, since the split consignments consist of identical units or sets of goods of a particular quantity, valuation of each consignment can be done easily apportioning the transaction value.

In the third case also, transaction value method can be applied with suitable adjustments made for differences in transportation charges to various ports.

## **COMPLIANCE AND CONTROL**

Q67 How is the ACV beneficial to an importer?

Ans The ACV is a trader-friendly and trade-facilitating Agreement. It seeks to harmonise systems of customs valuation across WTO Member countries. Even some non-Member countries apply its principles. Since the most preferred and primary method of valuation under the ACV is based on the transaction value, the duty liability becomes known in advance. It brings in greater objectivity and transparency to determination of customs value and makes the border crossing faster, cutting down costs and delays. The ACV gives several rights to the importers. These are discussed in the next section.

Q68 What should an importer do to comply with the valuation laws of his country based on the ACV?

Ans He should first find out whether his goods are subject to *ad valorem* duty under the customs tariff of his country. If so, he should truthfully declare (in the entry document for the imported goods) the actual price paid for the goods; fill in a special valuation form, if required; and also disclose to the customs authorities if he has any special relationship with the supplier; or if there are any further payments to be made, or any special conditions attached to the purchase. He should also submit copies of documents relating to the import such as a purchase order or contract, invoice, freight and insurance bills etc. In many countries, if an importer regularly importing identical or similar goods from the same source, he may be allowed to clear his goods on a simple declaration on subsequent occasions once customs value is determined for an earlier import.

Q69 What should an importer do if his goods cannot be valued under the transaction value method?

Ans Paragraph 2 of the General Introductory Commentary to the ACV stipulates that where the customs value cannot be determined under the transaction value method, there should normally be a process of consultation between the customs officials and the importer with a view to arriving at an alternative basis of valuation. The ACV puts lots of emphasis on the interaction between the importers and customs officials to determine the customs value in a transparent manner. Full and complete disclosure of the circumstances of sale and payments made will assist in proper and early determination of customs value.

Q70 Can an importer obtain an advance ruling from customs on how his goods will be valued, particularly if he is related to the seller?

Ans The ACV neither provides for issue of advance ruling in valuation matters nor prohibits it. The importer has to check the domestic law of his country and find out if he can get an advance ruling by disclosing all relevant facts ahead of the imports taking place.

Q71 What kind of control system should a customs administration adopt to ensure proper valuation of imported goods?

Ans There is no uniform system that will suit the specific needs of every country. However, depending on its size, volume of trade and number of customs entry points, each country has to plan as to whether its valuation control should be exercised centrally or through regional and local offices. Similarly, there can be a choice between pre-clearance controls and post-clearance controls, depending on the types of importers. In the case of a manufacturer-importer, a periodic post-clearance audit at his fixed place of business may be more suitable. In the other hand, pre-clearance control may be better suited in respect of traders having no fixed place of business or traders importing from different ports at irregular intervals. Normally, most customs administrations prescribe a value declaration as a control document in addition to the entry document. For smaller consignments below a threshold value, the declaration is usually waived. Risk analysis method can be put in place for selecting specific imports or specific importers for greater scrutiny based on past record as well as risk profiles.

Q72 Is it necessary to require importers to maintain records after importation is complete and duty is paid?

Ans Yes. Since post-importation audit may take time and the national laws may provide a time-limit for recovery of short-levied duty, it is necessary to fix a importers to keep the records relating to import transactions till then.

Q73 Should the national legislation provide for penalties and fines for wrong declaration of customs value?

Ans The ACV does not support or encourage fraudulent declaration of value. However, it does not contain any provision or guidelines for penalties and fines. Each country has to provide for adequate penal provisions in its domestic legislation to tackle valuation fraud. Such fraud needs to be curbed with a heavy hand as it not only deprives the state of

its legitimate revenue but also causes trade distortion and puts honest traders at a disadvantage. At the same time, unintentional mis-declaration on account of a wrong understanding of the valuation provisions should be dealt with leniently.

Q74 Do the customs officials need any specialised training to implement the provisions of ACV?

Ans Yes. The valuation provisions under the ACV are very detailed and are supplemented by detailed interpretative notes. Both the customs officials and the traders need to be trained extensively to be able to apply the provisions. Since the ACV lays greater emphasis on valuation based on transaction value and greatly reduces the discretion of the customs officials, they need to have special training and better administrative skills to be able to detect fraudulent declarations while facilitating honest importers.

Q75 Is there a need for building a valuation database?

Ans Building a valuation database with both historical and current import data is not an easy task particularly if it has to incorporate details of description of the goods along with differences in quantity, quality, commercial level, country of origin, name of manufacturer, brand etc. to provide meaningful comparison. It requires adequate financial human and computing resources to build, maintain and update such a database particularly if the basket of imported goods is very large for a country. However, a valuation database is useful for determining customs value on the basis of transaction value of identical and similar goods. It is also useful for detecting suspected valuation fraud cases.

## **RIGHTS OF IMPORTERS**

Q76 Does the importer have a right to appeal against determination of customs value by the customs authorities?

Ans Yes. Article 11 of the ACV lays down that legislation of each Member country should provide rights of appeal, without penalty, against determination of customs value. The first appeal can be to a higher authority within the customs administration or to an independent body. It also requires a final right of appeal to a judicial authority to be provided in the national law.

Q77 Is the importer required to pay the assessed customs duty pending his appeal?

Ans The importer cannot be subject to a penalty merely because he chooses to appeal against determination of customs value by the customs authorities. However, the customs authorities are not prevented from requiring full payment of the assessed customs duty prior to filing an appeal. Under some national laws, there may be provision for securing differential duty on the disputed quantum of value through a bond or surety pending decision in appeal.

Q78 At times, the final determination of customs value may be time-consuming. Does the importer have a right to take clearance of his goods pending such determination?

Ans Yes. Article 13 of the ACV allows an importer to withdraw his goods from customs control pending determination of customs value by providing sufficient guarantee in the form of a surety, a deposit or any other appropriate instrument as required, covering the final payment of customs duties on the goods.

Q79 What rights has an importer to get information regarding how customs value is determined in his/ her case?

Ans Article 16 of the ACV provides that upon a written request the importer shall have the right to an explanation in writing from the customs administration as to how the customs value of his/ her goods was determined. Article 7.3 of the ACV also has a similar provision enabling the importer to obtain in writing the customs value determined under the fall-back method by making a request.

In the context of related party transactions, Article 1.2 (a) of the ACV requires that when the customs authorities have grounds for considering that the relationship has influenced the price, they are required to communicate the grounds to the importer and give the importer so requests, the communication of the grounds has to be in writing.

Under the Uruguay Round Ministerial Decision, which was subsequently adopted by the WTO Committee on Customs Valuation (see Appendix III) when the customs administration decides that the customs value cannot be determined under the transaction value, the grounds of such doubts have to be communicated to the importer, in writing if requested and the importer has to be given a reasonable opportunity to respond. The final decision, along with the grounds, must also be communicated to the importer.

Q80 The importer is often required to provide commercial information to the customs authorities in the course of determination of customs value. Does he/ she have any rights to confidentiality?

Ans Yes. Article 10 of the ACV requires that any information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation, shall be kept confidential and not be disclosed without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Q81 Does the importer have a right to obtain judicial decisions and administrative rulings of general application?

Ans Article 12 of the ACV requires that laws, regulations, judicial decisions and administrative rulings of general application giving effect to the provisions of the ACV shall be published.

Q82 What other rights the importers have under the ACV?

Ans Under Article 4 of the AACV, an importer has a right to ask for reversal of the sequence of application of the deductive value method and the computed value method. However, developing countries can make a reservation in this regard and allow such a reversal only with the prior consent of customs.

Under Article 5.2 of the ACV, the importer can request for determination of customs value based on the sale price of imported goods sold after further processing. The developing countries can make a reservation in this regard to apply the provisions of Article 5.2 whether or not the importer so requests.

## **RIGHTS OF CUSTOMS AUTHORITIES**

Q83 Does the ACV restrict the rights of customs authorities?

Ans No. Article 17 of the ACV states that nothing in the Agreement should be construed as restricting or calling into question the rights of the customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs authorities. It recognises that customs authorities may make enquiries for verifying that the elements of value declared or presented to customs are complete and correct.

Q84 What course of action is open to the customs authorities when they have reasons to doubt the declared value?

Ans The Uruguay Round Ministerial Decision, subsequently adopted by the WTO Committee on Customs Valuation (see Appendix III), allows the customs authorities in such cases to make further enquiry with the importer and to reject the declared value if there are still reasonable doubts about its truth and accuracy. However, the procedure outlined in the Decision has to be followed and the customs value has to be determined in such cases using another method in the hierarchy.