

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/M/9

13 July 1984

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## Committee on Customs Valuation

### MINUTES OF THE MEETING HELD ON 26 APRIL 1984

Chairman: Mr. J.-C. Renoue

1. The Committee on Customs Valuation held its ninth meeting on 26 April 1984.
2. The Committee elected Mr. J.-C. Renoue (France) as Chairman and Mr. Chul-Jin Kim (Republic of Korea) as Vice-Chairman for 1984.
3. The following agenda was adopted:

	<u>Page</u>
A. Accession of further countries to the Agreement	1
B. Technical assistance	2
C. Information on implementation and administration of the Agreement	3
D. Report on the work of the Technical Committee	5
E. Linguistic consistency of the term "development" in Article 8.1(b)(iv)	7
F. Treatment of interest for deferred payment; valuation of computer software	8
G. Other business:	
(i) Panelists	10
(ii) Derestriction of documents	10
(iii) Preparation for fourth annual review	10
(iv) Dates and draft agendas of next meetings.	10

#### A. Accession of further countries to the Agreement

4. The Chairman noted that, since the Committee last met, Malawi had accepted the Agreement, on 22 November 1983; Malawi had invoked the provision of the Agreement enabling it to delay application of the Agreement for a period of five years. He also noted that Czechoslovakia had accepted the Agreement, on 2 April 1984, subject to ratification.
5. The Committee welcomed Malawi's acceptance and Czechoslovakia's signing of the Agreement, and looked forward to the early ratification of the Agreement by Czechoslovakia.
6. The representative of the United States indicated the interest of her country in what action Botswana intended to take in regard to the agreement reached by the Committee at its last meeting on the terms of accession of Botswana to the Agreement and asked if the secretariat had further information. The representative of the secretariat said that the Botswana Government had been informed of the developments at the Committee's last meeting, and that to date the secretariat had not received any communication from the Botswana Government concerning its intentions.

## B. Technical assistance

7. The Chairman, recalling the statements made at the Committee's last meeting on this item (VAL/M/8, paragraphs 10-18), asked if delegations had any additional information or comments that they would wish to bring to the attention of the Committee.

8. The observer from the Customs Co-operation Council said that, at its meeting held 27 February-2 March 1984, the Technical Committee had completed its analysis of the replies from some thirty developing countries to the Technical Committee's questionnaire on technical assistance; the analysis was contained in CCC document 31.369. In addition, the Technical Committee had arranged for the publication of an information document (CCC document 31.245) containing a listing of the seminars and training courses organized on customs valuation by developed countries, together with relevant activities of the Customs Co-operation Council in this field. Referring to the Customs Co-operation Council's first training course on the Agreement, which would be held in the English language in June 1984, he said that great interest had been shown by countries in putting forward candidates and that the course had been over-subscribed. A second course, scheduled for October, would be held in French; there were still places available on that course. Turning to certain other matters relevant to technical assistance, he said that the first quarterly Index of Valuation Rulings and Conclusions (CCC document 32.000) had been issued in accordance with the agreement on this matter at the Technical Committee's September 1983 meeting. This first issue listed valuation rulings under the Agreement by the EEC, Finland, New Zealand and the United States. Subsequent editions would be issued as revisions of CCC document 32.000. The Technical Committee, in examining the first issue, had welcomed the wealth of information contained in it and had considered that the exchange of information at this level would be highly beneficial to present and future Parties to the Agreement. The observer from the Customs Co-operation Council also said that the Customs Co-operation Council had completed its comparative study of the Brussels Definition of Value and of the GATT Agreement; in addition to a point-by-point comparison of the main elements of each valuation system, this included analysis of how the GATT Agreement would be applied to some seventy practical cases developed over the years in the context of the BDV.

9. The representative of the European Communities said that a seminar on the Agreement had been held by the Communities in February 1984 for CARICOM countries; representatives of the CCC and the GATT secretariats had collaborated in this seminar. The Communities hoped before the end of 1984 to hold a further seminar in East Africa for English-speaking countries, not necessarily confined to those in East Africa. Referring to the contributions of the individual member States of the Communities, all of which were involved in technical assistance, he informed the Committee of certain activities by France. In 1984, as in previous years, fifty trainees from twenty countries had followed in the French national customs school a course, which had also been attended by French trainees. Thirty hours of the course had been devoted to the definition of value, both in its theoretical and in its practical application. In addition, twelve officials from six countries had participated in a three week, more general course in France, a large part of which had been given over to valuation questions.

C. Information on implementation and administration of the Agreement

(i) South Africa

10. The Committee examined the South African legislation and replies to the checklist of issues, contained in documents VAL/1/Add.15 and Corr.1, and VAL/2/Rev.1/Add.13 respectively.

11. Recalling his statement introducing the legislation of his country at the Committee's last meeting, the representative of South Africa said that the whole of Part 1 of the Agreement, dealing with the "Rules on Customs Valuation", was incorporated in Sections 65 to 67 of Chapter IX of the South African Customs and Excise Act with certain texts slightly adapted to accord with South African legal terminology. The most significant Interpretative Notes had also been included in the Act; others were in the Regulations to the Act. He emphasized that, as a signatory to the Agreement, South Africa recognized the need, to the greatest extent possible, for the uniform interpretation and application of the Agreement by the Parties thereto. South Africa had therefore given legal status to the whole Agreement, the Interpretative Notes thereto and the documents issued thereunder, in Section 74 A(1) of the Act. The interpretation of the South African Customs and Excise Act, as far as it related to the customs values of imported goods, was therefore, in fact, the interpretation of the Agreement itself. In the enactment of the Agreement it had been sought to avoid duplication of legislation and Articles of the Agreement; Articles 10 and 13, for which general provisions already existed in the Act (in Sections 4(3) and 107(2)(a) respectively), were therefore not repeated in Chapter IX of the Act (see document VAL/1/Add.15, pages 2 and 3 in this regard). At the last meeting, his delegation had said that it was already evident that the new valuation system, which had only been in operation for three months at that time, was far more acceptable to the importing community in South Africa than any previous system. He reported that after nine months of experience no substantial difficulties had to date been experienced in the application of the Agreement.

12. The representative of South Africa gave detailed replies to questions that the delegations of the European Communities and the United States had presented to his delegation in writing in advance of the Committee's meeting. The text of these questions and answers is reproduced in the Annex to these minutes.

13. The representatives of the European Communities and the United States expressed their appreciation for the detailed replies given by the representative of South Africa. They would study the replies and, if any point seemed in need of further clarification, they might come back to it at a future meeting of the Committee.

14. The representative of Canada said that his delegation had intended to ask a question on the uplifts provided for in Sections 66(8)(a) and 70(1)(a). His delegation would study the replies given to the questions of the European Communities and the United States on this issue and, if necessary, come back to these points at a later meeting.

15. In response to a question from the representative of Spain concerning the South African response to question 1(a)(ii) of the checklist of issues (VAL/2/Rev.1/Add.13), the representative of South Africa confirmed that in

South Africa the fact that the buyer and seller were related was not considered prima facie grounds for regarding the price as being influenced. The relationship between buyers and sellers was only examined if customs suspected that the relationship had influenced the price.

16. The Chairman thanked the South African delegation, on behalf of the Committee, for the considerable efforts made to clarify and provide additional information on certain aspects of the South African legislation. He noted that it would be possible for delegations to come back, either at the next meeting of the Committee or bilaterally in the interval, to any point that they felt required further clarification.

(ii) European Communities

17. The representative of Spain, referring to Article 3 of the Commission Regulation on the incidence of royalties and licence fees in customs value (document VAL/1/Add.2/Suppl.5), asked what was meant by the phrase "minor processing after importation" in the first indent, and which provision of the Agreement covered this concept.

18. The representative of the European Communities said that he had taken note of the question and would supply a considered response at a later stage.

(iii) Canada

19. The representative of Canada said that on 15 February 1984 the Federal Canadian Minister of Finance had introduced a Ways and Means Motion that would implement the Valuation Agreement on 1 January 1985. He recalled that the Canadian agreement to implement the Agreement was conditional on the satisfactory conclusion of Article XXVIII negotiations on tariff rate adjustments and in this regard referred to document VAL/5 informing the Committee of the initiation of those negotiations. Canada considered that its implementation of the Agreement would represent a major contribution towards meeting the concern of the international community to bring customs valuation practices under greater international discipline.

20. The Chairman expressed the hope that no obstacles would arise in the context of the Article XXVIII negotiations that would delay Canada's application of the Agreement.

(iv) Czechoslovakia

21. The Committee invited Czechoslovakia to forward to the secretariat the text of its legislation and replies to the checklist of issues, for circulation to the Parties, as soon as possible after ratification of the Agreement.

(v) Australia

22. The representative of the European Communities said that his delegation continued to hold the views that it expressed at the last meeting of the Committee in regard to provisions of Section 159.(3)(d) of the Australian legislation, which in the Communities' view appeared to create a new category of assists, i.e. assists supplied for the production of assists (VAL/M/8, paragraph 29). He wondered whether the Australian

delegation had any further reaction to the concerns expressed by his delegation.

23. The representative of Australia said that she would refer the Communities' concerns to her authorities to see what further clarifications could be provided.

D. Report on the work of the Technical Committee

24. The observer from the Customs Co-operation Council presented a report on the seventh session of the Technical Committee on Customs Valuation, held 27 February-2 March 1984, on behalf of Mr. N.S. Foldi (Australia), who had been re-elected Chairman of that Committee. The report of the session was contained in CCC document 31.460. All Parties, except for three, had been represented at the session; observers from twenty-nine other countries had attended. At the session, the Technical Committee had adopted the following texts on technical questions:

- A Commentary on the Treatment of Package Deals, which described various package deal scenarios likely to give rise to problems of valuation, and explained how they should be resolved.
- An Advisory Opinion on the Treatment of Inadvertent Errors and of Incomplete Documentation. After describing the various potential solutions and indicating the appropriate one, the Opinion concluded that the treatment of documents which were incomplete or which contained inadvertent errors could differ from one case to another. In this regard, it was also recognized that there would be differences in the practices followed by customs administrations and the degree of discretion prescribed by them.
- Two texts for insertion in Explanatory Note 1.1 dealing with:
  - (a) The meaning of the term "at or about the same time" in Articles 2 and 3 of the Agreement. In short, this text stipulated that the expression "at or about the same time" should be taken to cover a period of time within which commercial practices and market conditions which affected the price remained the same. In the final analysis, the question had to be decided on a case-by-case basis within the overall context of the application of Articles 2 and 3. It also stated that the fact that the time of exportation of similar goods (as opposed to identical goods) was closer to that of the goods to be valued could never reverse the strict order of application of Articles 2 and 3 as required by the Agreement.
  - (b) The time standard for test values under Article 1.3(b). The Technical Committee had based itself on the advice given by the Committee on Customs Valuation on this matter at its November 1983 session (VAL/M/8, paragraph 74). It had decided it more appropriate to incorporate the text it adopted into Explanatory Note 1.1 dealing with the time element in Articles 1, 2 and 3 of the Agreement, rather than make the text a separate Explanatory Note as earlier envisaged.

25. Continuing his report, the observer from the Customs Cooperation Council said that the Technical Committee had also examined a number of other technical questions without, at this stage, adopting final texts. These concerned:

- Tie-in sales. This question stemmed from the examination of package deals. The Technical Committee had decided to prepare a separate instrument on tie-in and similar sales which would cover various situations of such sales, including those in which goods were sold and the proceeds were used for buying goods in the country of importation for export to the country of exportation or to a third country.
- Treatment of confirming commission. The Technical Committee had decided to continue its study of this question on the basis of further information to be communicated by Parties having experience with this type of expense.
- Interpretation of the term "development" in Article 8.1(b)(iv). This question was being held in abeyance by the Technical Committee pending a decision of the Committee on Customs Valuation on the linguistic aspects.
- Treatment of costs incurred after importation. The CCC Secretariat was to prepare, for the next session of the Technical Committee, a draft instrument taking account of the views on this subject expressed in writing and orally at the seventh session.
- Adjustment for differences in commercial level and in quantity under Article 1.2 and Articles 2 and 3 of the Agreement. A few minor points remained outstanding. The Technical Committee should be in a position to adopt an instrument on this subject at its next session.
- Practical application of Article 7. Most of the countries already applying the Agreement seemed not to have experienced any particular problems in respect of this Article. Nevertheless, the Technical Committee had felt that case studies on the application of Article 7 would be extremely useful, particularly for those developing countries which were considering adopting the Agreement. The question had therefore been retained in the programme of future work.

26. Turning to the future work of the Technical Committee, he said that, in addition to the items already mentioned above, the following matters had been included on the agenda for the next session:

- case study on conditions in Article 1;
- cost of activities undertaken by the buyer on his own account;
- meaning of the expression "sold for export to the country of importation"; and
- updating of the conspectus of technical valuation questions.

27. The representative of the United States expressed the appreciation of her delegation for the excellent work done to date by the Technical Committee, and for the way in which this work was being guided by the Chairman, Mr. Foldi, and assisted by the CCC-Director of Valuation,

Mr. O'Loughlin. The representative of the European Communities agreed fully with these remarks.

28. The Chairman said that he felt sure that the Committee as a whole wished to be associated with these sentiments, and to express its satisfaction at the highly useful and effective work accomplished by the Technical Committee. He noted with satisfaction the large number of observers that had attended the last session of the Technical Committee, which indicated clearly the high level of interest of non-Parties in the Agreement. He further noted that the Technical Committee had a continuing heavy workload before it.

29. The Committee took note of the report on the work of the Technical Committee and expressed its appreciation for its excellent work.

E. Linguistic consistency of the term "development" in Article 8.1(b)(iv)

30. The Chairman recalled that, at the last meeting of the Committee, the Chairman of the Technical Committee, reporting on the work of the sixth session of that Committee, had raised the question of the linguistic consistency in the English, French and Spanish texts of the term "development" in Article 8.1(b)(iv) of the Agreement (VAL/M/8, paragraph 41). The Committee had agreed that the secretariat, after consulting with interested delegations, should draw up a note, which first would outline the nature of the linguistic issue, and secondly, if possible, put forward suggestions as to how the Committee might proceed on this matter. This note had been circulated as document VAL/W/24. He noted that in paragraph 5 of this note the secretariat, after examining the drafting history, had suggested that the Committee agree that the terms "development" in English, "travaux d'études" in French and "creación y perfeccionamiento" in Spanish in Article 8.1(b)(iv) of the Agreement be understood to exclude "research" in English, "recherche" in French and "investigación" in Spanish. He asked whether the Committee was in a position to accept this suggestion.

31. The representatives of Argentina and Spain said that their authorities were still studying the issue. They therefore requested that the Committee postpone a decision on the matter.

32. The representative of Spain further said that, in his view, the difficulty as regards the Spanish text arose from the lack of precision of the phrase "creación y perfeccionamiento" in Spanish in the context of customs valuation.

33. The representative of Australia said that her delegation endorsed the conclusions in paragraph 5 of VAL/W/24. Australia's interpretation of the terms "research" and "development" was based primarily on the definitions adopted by the OECD in the Frascati Manual of 1963. These definitions were as follows:

"Industrial research is work undertaken to acquire new knowledge which could be applied to a specific industrial objective."

"Industrial development is systematic work undertaken that is directed towards producing new products, installing new processes, and/or substantially improving those products or processes already produced or installed."

The above definitions were consistent with the definition of research and development set out in the International Accounting Standard 9 adopted by the International Accounting Standards Committee, which was reproduced by the Customs Co-operation Council secretariat in the annex to CCC document 30.684. On the basis of these definitions, Australia considered that, where costs can be identified as development costs on the basis of objective and quantifiable data, such costs should be added to the price under Article 8.1(b)(iv) of the Agreement. There was no scope for the addition of genuine research costs, as such costs were incurred as part of an on-going process, could not be attributed to the imported goods and were not specified in the English version of Article 8.1(b)(iv).

34. The representative of the United States said that her delegation had been particularly impressed by the negotiating history contained in paragraph 4 of VAL/W/24 and would have no problem in adopting the suggestion in paragraph 5 of that paper.

35. The representative of the European Communities said that his delegation could accept the suggestion contained in paragraph 5 of VAL/W/24. He noted that the issue was only linked to the meaning of the term in Article 8.1(b)(iv) of the Agreement and had no wider implications.

36. The Chairman noted that the two Spanish-speaking Parties wished for further time to examine the question, and that the other Parties could accept the suggestion in paragraph 5 of VAL/W/24. He suggested that the Committee take note of this situation and agree to come back to this question at its next meeting with a view to taking a decision. He hoped that, in the meantime, the further consideration in the Argentinian and Spanish capitals would enable those delegations to join the position taken by other delegations.

37. It was so agreed.

F. Treatment of interest for deferred payment; valuation of computer software

(i) Treatment of interest for deferred payment

38. The Committee adopted the Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods proposed on page 3 of document VAL/W/13/Rev.3 (subsequently issued as document VAL/6).

(ii) Valuation of computer software

39. The representative of the United States said that informal consultations aimed at producing a generally acceptable text of a decision had taken place and would be pursued actively. She believed that, given the apparent substantive support of most delegations for a compromise proposal along the lines of VAL/Spec/8, an agreed text could be arrived at in the near future.

40. The representative of Argentina said that his delegation continued to have substantive difficulties with the proposal under discussion, for two main reasons. First, whereas one of the basic aims of the Agreement was uniformity of valuation practices, the essence of the proposal was to permit countries to use differing methods of valuation. Secondly, while under the Agreement it was required that transaction value should be used



as the basis for valuation to the greatest extent possible, the proposal introduced the possibility of acting contrary to this requirement.

41. The representative of Brazil said that the core of the problem arose from the desire of a group of countries to establish through a formal decision the consistency with the Agreement of a certain practice for the valuation of computer software - the practice of exempting the software component from the value of imported carrier media bearing data or instructions. His delegation had difficulty with understanding the position of some delegations that this practice arguably could be consistent with the Agreement, in particular the rules on transaction value which was the primary basis for customs value established by the Code. In his view, the exemption of the software element would simply constitute an exception to the general rules of the Code. He recalled that, as expressed on previous occasions, Brazil had difficulty with dealing with this matter through a decision. Moreover, as regards the proposal in VAL/Spec/8, Brazil considered the language very unbalanced. He wondered whether, in view of the difficulties of his delegation and also of the statement made by the Argentinian delegation, some approach other than a Committee decision should be explored, for example the Committee taking note of the practice that a number of countries wished to apply. However, if there were a consensus on the necessity of a decision, his delegation would nonetheless be prepared to co-operate in attempts to find acceptable language, provided that any decision re-affirmed that the inclusion of the value of the software element in value for duty was fully compatible with the Agreement, and that its exclusion might be accepted, for those so wishing, on an exceptional basis and without creating a precedent.

42. The representative of India recalled that the views of his delegation on the substance of this matter had been recorded in the minutes of previous Committee meetings. In the view of his delegation, it was clear that the application of the transaction value method, as laid out in the Agreement, to computer software required the total value of the carrier media and the data or instructions to be assessed for duty. He noted that some Parties wished for an exception from the transaction value concept only in respect of computer software. In considering the possibility of an exception for a limited number of Parties that wished to adopt such a practice, his delegation would wish to be sure of the following: that any derogation granted on this matter would not in any way prejudice the definition or concept of transaction value under the Code; that any decision would not undermine or prejudice in any way the rights of other Parties, such as India, that would continue to include the software element in value for duty; and that there would be no resulting discrimination against these Parties, either in the context of the Agreement or in any other context. If assurances on these points could be provided, his delegation would be prepared to co-operate constructively in further consultations.

43. The Committee noted that informal consultations on the valuation of computer software were continuing and agreed to revert to this matter when an agreement seemed possible.

G. Other business

(i) Panelists

44. The Chairman recalled that, in accordance with paragraph 2 of Annex III to the Agreement, Parties were expected at the beginning of 1984 to nominate persons available for panel service in 1984 or to confirm existing nominations. He said that, as of the time of the meeting, nominations or confirmations for 1984 had been received from Finland, Sweden and the United States. In addition, he had past nominations from the EEC, Hong Kong, Japan, Norway, Romania and Spain. He requested Parties wishing to modify previous nominations and Parties not having made such nominations to communicate the relevant information through the secretariat as soon as possible.

(ii) Derestriction of documents

45. The Chairman said that, in accordance with the procedure agreed by the Committee at its first meeting, the secretariat had proposed in document VAL/W/23 the derestriction of certain Committee documents issued in 1983. Since no delegation had made any objection to this proposal, these documents had become derestricted as of 1 January 1984. This meant that all documents in the series VAL/1-4 issued up to the end of 1983 had been derestricted.

(iii) Preparation for fourth annual review

46. The Committee agreed that the background document to be prepared by the secretariat for the fourth annual review of the implementation and operation of the Agreement, to be undertaken at the Committee's autumn session, would follow basically the same outline as the background document for the third annual review (VAL/W/21/Rev.1), leaving open the possibility for individual delegations to communicate through the secretariat, before 30 September 1984, any additional item that they might wish included. The Committee invited interested delegations to submit directly to the secretariat information relating to the points to be covered that was not already available in Committee documents and that they would wish included in the background note.

47. The representative of the European Communities said that his delegation had transmitted to the secretariat, for circulation to Parties, a judgement of the Court of Justice of the European Communities relating to the definition of "the price actually paid or payable" (subsequently issued as document VAL/7). He further said that the secretariat background note for the forthcoming annual review might put more emphasis on the successful implementation and operation of the Agreement so far; the fact that no significant difficulties or controversies had arisen was a reflection of this.

(iv) Dates and draft agendas of next meetings

48. The Committee agreed to hold its next regular meeting on 8-9 November 1984 and to set aside tentatively 9-10 May 1985 for its first meeting in 1985.

49. The Committee agreed that the draft agenda of its November 1984 meeting would include the following items:

- A. Accession of further countries to the Agreement
- B. Technical assistance
- C. Information on implementation and administration of the Agreement
- D. Report on the work of the Technical Committee
- E. Linguistic consistency of the term "development" in Article 8.1(b)(iv)
- F. Valuation of computer software
- G. Annual review of the operation of the Agreement
- H. Annual report to the CONTRACTING PARTIES.

ANNEX

Examination of the South African Legislation:  
Questions Put in Writing to South Africa and South African  
Replies Given in the Course of the Committee's Meeting

(a) Questions by the EEC

Question 1

Question: What is the legal basis in the Agreement or in the GATT for the 15 per cent uplift of transaction value provided for in Section 65(8)(a) of the Customs and Excise Act?

Answer: Ordinary Customs duty, to which the Agreement refers, is provided for in Part 1 of Schedule No.1 to the Act. Chapter IX of the Act, however, deals with the values of all duties leviable under the Customs and Excise Act. Section 65(8)(a) provides for a value for customs duty purposes of any imported goods specified in Section B of Part 2 of Schedule No.1 and is couched in specific terms to put this beyond doubt. This is an ad valorem excise duty on less essential locally manufactured goods of the same class or kind. The value here concerned is not a customs value as such, although it is a value that has the transaction value as basis. The 15 per cent to be added accounts for the cost of freight, insurance, wharfage and clearing charges to bring the value of the imported goods to a free-on-rail-price at the port of importation and thus to place them on the same value level as that applied to identical locally manufactured goods when levying the corresponding excise duty.

Question 2

Question: In the context of the deductive method (Section 66(7) of the Customs and Excise Act), what is to be understood by the term "importer" and what is the treatment for:

- (a) goods sold by persons other than the "importer"?
- (b) transport costs within the Republic where the goods are not sold at the importer's premises?

Answer: In terms of Section 1(1) of the Customs and Excise Act the term "importer" is defined as:

"any person who, at the time of importation:

- (a) owns any imported goods;
- (b) carries the risk of any goods imported;
- (c) represents that or acts as if he is the importer or the owner of any goods imported;
- (d) actually brings any goods into the Republic;
- (e) is beneficially interested in any way whatever in any goods imported; or

(f) acts on behalf of any person referred to in the definition."

This definition takes care of goods sold by persons other than the actual importer.

South Africa has decided to retain the f.o.b. concept of valuation in terms of Article 8.2 of the Agreement and no freight beyond the f.o.b. point is therefore to be included in the value for customs purposes. Section 66(7)(a)(ii) of the Act must also be read in conjunction with the definition of the term "importer" as well as Section 67(2)(a) where it is clearly spelt out that transport cost from the port or place of exportation to the place of importation in South Africa is to be deducted from the invoiced price if it is included in such price.

### Question 3

Question: Having regard to Article 7.2(c) of the Agreement, why is the selling price of the imported goods on the domestic market of the country of origin of the imported goods not to be accepted as a basis for valuation under Section 66(9)(c) of the Customs and Excise Act, when the country of origin may be different from the country of exportation?

Answer: Goods imported into the Republic will normally be exported from the country of origin. It is however agreed that the country of origin may be different from the country of exportation. For this very reason it seemed strange to the drafters of the legislation that, if goods are exported from the country of origin, the selling price of such goods on the domestic market of that country may not be used as basis for the value for customs purposes, but if the goods are exported from a different country the selling price in the first country may be accepted. The legislation therefore provides for both eventualities, which favours the importer. This would appear to be a purely academic problem; no problems can be foreseen in practice. Importers or their suppliers are in any case reluctant to disclose the domestic prices of their goods and domestic values have never been used as a basis for valuation since implementation of the Agreement. If this Committee were to insist on the deletion of the words "of the country of origin or", the case would be referred to the South African Government law advisers. However, such a step would not seem necessary.

### Question 4

Question: In what form and in what place are rates of exchange, used for customs purposes, published by the competent authorities in the Republic?

Answer: In the South African monetary system, all the authorized dealers in foreign exchange (including the commercial banks) determine their own rates of exchange depending on their own demand for and supply of the particular foreign currency. They are thus the competent authorities in terms of Article 9.1 of the Agreement and publish their rates in the daily newspapers. The Administration obtains the daily rates of one of the bigger commercial banks and as stated in the answer to question 7 of the "Checklist" these rates are published in a weekly circular freely available to importers and also posted in customs offices. The rates which are circulated are governed by Regulations 9.01.01 to 9.01.03.02 (page 5 of

VAL/1/Add.15) and the authorizing legislation is Section 73. Importers are free to use the rates circulated by customs or the rates published by the banks through which they finance their foreign transactions. The Administration is at present negotiating with the South African Reserve Bank (central bank) and organized trade and industry to publish an official rate of exchange based on the average daily rates of the bigger commercial banks which will then be circulated and be the only acceptable rates for customs valuation purposes.

Question 5

Question: Does the Republic provide an appeal system concerning customs valuation to be used prior to reference to the Supreme Court?

Answer: Yes. In terms of Sections 3(2) and 65(5) of the Act, the Commissioner for Customs and Excise, who is the highest authority within the Customs Administration, may amend or withdraw a value determination made by an officer. Moreover Section 96(1) provides for a month's notice to institute legal proceedings, which in itself is a further opportunity to the Commissioner to reconsider any determination made, before the action is brought to court.

Question 6

Question: How is Note 20.00 in the "Notes for the Guidance of Importers" (page 61 of VAL/1/Add.15), under which, for example, research separately charged by the seller of the imported goods to the buyer is to be included in the Customs value, to be reconciled with Article 8.4 of the Agreement?

Answer: This Note was taken over from the "Guide to Customs Valuation" on South Africa's previous valuation system. The new Guide had been drafted long before the differences between the development costs of imported goods and the general research costs of the manufacturer was discussed by the Technical Committee. It had been thought at the time that it would be difficult to distinguish between the two terms, "research" and "development", as they are used in contracts between buyers and sellers in the same context. The Notes are merely explanatory, and have no legal status. Note 20.00 will, however, be redrafted if and when the Guide is amended, by deleting the word "research" and by indicating that the cost of tools, dies, moulds, etc., only are to be included in the customs value of imported goods "if 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, as specified in Article 8.1(b)(ii) of the Agreement and Section 67(1)(b)(ii) of the Act. The provisions of Article 8.4 of the Agreement are respected at all times.

(b) Questions by the United States

Question 1

Question: How does Section 65(8)(a) relate to the requirement in the Valuation Code that transaction value is the price actually paid or payable for the goods?

Answer: Although in different terms, this question was also asked by the EEC. The requirement in the Valuation Code that transaction value is the

price actually paid or payable for imported goods is provided for in Section 66(1) of the Act. As explained in the answer to the EEC question, Section 66(8)(a) defines a value for the calculation of the duty specified in Section B of Part 2 of Schedule No.1 to the Act which is an ad valorem excise duty on certain less essential locally manufactured goods with a corresponding customs duty on imported goods of the same class or kind.

#### Question 2

Question: Section 65(8)(b) indicates that Section 70(3) or (4) shall apply to the determination of value for certain types of merchandise. What does Section 70(3) and (4) provide, and what authority is there under the Valuation Code for the apparent special value treatment for certain types of goods?

Answer: Sections 70(3) and (4) must be read with Sections 69(4)(a) and (b) of the Act which provide for a value, for ad valorem excise duty purposes, on pearls, precious and semi-precious stones and metals, jewellery, etc., manufactured in South Africa, with a corresponding duty on imported goods of the same class or kind. Section 65(8)(b) again must be read in conjunction with Section 65(8)(a) as it provides for the goods excluded from the latter. Sections 70(3) and (4) contain a specific facility granted to importers of these goods whereby duty is paid after the good has been disposed of to consumers and not at the time of importation, in view of the long shelf life of these goods.

#### Question 3

Question: What meaning, if any, is to be ascribed to the omission of the word "significant" appearing in Articles 2.2 and 3.2 of the Valuation Code, from Section 66(4)(a) and Section 66(5)(a)?

Answer: Articles 2.2 and 3.2 of the Valuation Code refer to the costs and charges of Article 8.2, i.e.:

- (i) the cost of transport;
- (ii) loading, unloading and handling charges associated with the transport of the goods; and
- (iii) the cost of insurance to the port or place of importation.

South Africa has decided to retain the f.o.b. concept of customs valuation. It was therefore only necessary to provide for transport, loading, unloading, handling charges and the cost of insurance up to the port or place of export. The Articles of the Code and the Sections of the Act therefore refer to different costs and charges. The cost of inland freight and insurance up to the port or place of exportation is normally such a small proportion of the price actually paid or payable for the imported goods that it was not regarded necessary to provide for "significant" differences. If the importer so desires, any difference will be allowed. The wording of the Valuation Code allows for a discretion as to whether charges are "significant" or not. The wording of the Act on the other hand does not allow for such discretion; all differences must therefore be taken into account. The South African legislation is thus more in favour of the importer, which is in line with the spirit of the Code.

Question 4

Question: In Section 66(7)(a)(i) what types of expenses are encompassed by the phrase "direct and indirect costs of marketing the goods", which phrase does not appear in Article 5.1(a)(i) of the Valuation Code?

Answer: In terms of paragraph 7 of the Interpretative Note to Article 5 of the Valuation Code, the term "general expenses" includes the "direct and indirect costs of marketing the goods in question", which is interpreted by the South African Administration to be, amongst other things, the cost of advertizing and promoting the sale of the goods in the country of importation.

Question 5

Question: Does the provision for profit and general expenses in Section 66(8)(e) require that the amount to be added be based on "sales for export to the country of importation" (i.e. South Africa) as is required by Article 6.1(b) of the Valuation Code?

Answer: The answer to this question is "yes", taking into consideration the specific wording of the preamble to Section 66(8), i.e. "The transaction value of any imported goods in terms of this sub-section ...".

Question 6

Question: Does the provision in Section 66(9) for basing a value on a "previous determination" extend to decisions under prior value legislation? What is the meaning of "previous determination" found in Section 66(9)? What provision in the Valuation Code permits a value to be determined on the basis of a "previous determination"?

Answer: The answer is that the term "previous determination" does not extend to decisions under prior value legislation in South Africa. Most decisions issued under South Africa's previous value system have in any case been cancelled over the past nine months. The meaning of the term "previous determination" is interpreted to be the same as the term "previously determined customs values" of paragraph 1 of the Interpretative Note to Article 7, where it is stated that:

"Customs value determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values".

This in turn is interpreted to mean that where a customs value has been determined under one of the other valuation methods, Article 2 (i.e. Section 66(4)) for instance, this determination could be applied more flexibly under Section 66(9), for example in regard to the requirement that identical goods should be exported at or about the same time as the goods being valued. Another example is contained in the last part of paragraph 3(a) of the Interpretative Note to Article 7 where the values of identical imported goods already determined under the provisions of Articles 5 and 6 are allowed.



Question 7

Question: Explain the meaning of the word "uplift" as used in Note 1.00 of the Note for the Guidance of Importers (VAL/i/Add.15, page 51).

Answer: Where the price charged by a foreign supplier (seller) to a South African buyer (the importer) is not acceptable for customs valuation purposes because such price is influenced by a relationship between the buyer and the seller, a customs value is determined in terms of Section 66 and the determined value is then expressed as a price or value per unit of the goods imported, or as a percentage "uplift" or "mark-up" to the invoice price.

Question 8

Question: Is there any provision in either South Africa's legislation or regulations in accordance with Article 8.3 of the Valuation Code, that additions to the price actually paid or payable be made only on the basis of objective and quantifiable data?

Answer: No specific provision exists in the South African legislation or regulations for the requirement that additions to the price paid or payable shall be made only on the basis of objective and quantifiable data. This requirement will, however, at all times be adhered to in terms of Section 74(A)(1) where it is clearly spelled out that the interpretation of Sections 65, 66 and 67, i.e. South Africa's customs valuation legislation, will inter alia be subject to the Agreement. Moreover, the powers vested in the Commissioner in Section 65(4) are governed by the legal principle that any determination made by the Commissioner could only be made on the basis of objective and quantifiable data, i.e. no arbitrary determination may be made by the Commissioner.

Question 9

Question: Is there any provision in either South Africa's legislation or regulations similar to that in Article 13 of the Valuation Code regarding withdrawal of goods upon deposit of estimated duties?

Answer: Yes. As indicated in the answer to Question 11 of the "Checklist of Issues", Section 107(2)(a) is a general provision in terms of which the Commissioner may allow goods to pass from his control provided suitable security is furnished. As this provision already existed prior to South Africa's implementation of the Valuation Code, it was not regarded necessary to provide separately for Article 13.

Question 10

Question: Under Section 71(2) are motor vehicles (both new and used) valued on any basis other than the price actually paid or payable? Does the provision in Section 71(2) making the Commissioner's determination "final" with respect to the value of new or used motor vehicles allow for administrative and judicial review? If so, explain the procedure.

Answer: The answer is "no". Motor cars are not valued on any basis other than the price actually paid or payable. In South Africa's last two valuation systems special provision was made for the valuation of motor vehicles imported by natural persons i.e. by immigrants and South African

residents returning after a visit overseas, sometimes with a new motor vehicle or even more than one, the reason being to allow for deductions from the value for period in use. When the legislation relating to the Valuation Code was drafted, it was decided to retain the status quo in this regard in view of the discussions which took place in the Technical Committee and the subsequent issuance of Study 1.1 of the Technical Committee. Section 71(2) will, however, be amended during the present Parliamentary session to put it beyond doubt that the valuation of motor vehicles imported by natural persons for their own use will also be subject to a right of appeal to the Court and to the provisions of Section 66 providing for the six methods of valuation. The statement in the old Section that "the Commissioner's determination will be final" will also be deleted. The appeal procedures will be the same as in respect of the value for customs purposes of other goods as previously explained, that is the importers will also have the right of appeal to the Supreme Court.

Question 11

Question: Please explain or clarify the apparent conflict between Section 74A(1) (providing that the interpretation of Sections 65 to 67 shall be subject to the GATT Valuation Code, etc.) and 74A(3) (providing that Section 74A(1) shall not derogate from the interpretation which, but for that sub-section, be given to Sections 65-67).

Answer: Articles 1 to 17 of the Agreement, which deal with the "Rules on Customs Valuation", have been incorporated in Sections 65 to 67 of the Act and the interpretation of the said Sections is therefore in fact the interpretation of the Agreement and the documents issued thereunder. Section 74A(3) puts it beyond doubt that if, for one reason or another, a difference of opinion should arise as to different interpretations of the Act and the Agreement, and here it must be emphasized that this is highly unlikely, the Act will take preference.