

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

VAL/W/42

30 April 1987

Special Distribution

Committee on Customs Valuation

Original: English/  
French

### PRIVATE COMPANIES ENGAGED IN CUSTOMS VALUATION

#### Information Received from the Economic Commission for Europe

At the meeting of the Committee on Customs Valuation of 10 November 1986, it was agreed that the secretariat make available to Committee members information on developments in other fora, such as the ECE and the ICC (VAL/M/19, paragraph 64). The following information has been received from the Economic Commission for Europe.

"The ECE Working Party on Facilitation of International Trade Procedures has for a number of years shown concern about additional costs and delays that pre-shipment inspection in general might impose on international trade. In 1981, a Recommendation on Facilitation Measures Related to International Trade Procedures, adopted by the Working Party, included Recommended Measure 8.2 which read as follows:

#### 'Discouragement of pre-shipment inspection

The present trend towards increased pre-shipment inspection of goods for purposes other than phytosanitary, sanitary and veterinary controls causes serious concern because of its implications in the form of costs and delays. This practice should be discouraged...'

With regard, more specifically, to the price control aspects of pre-shipment inspection, delegations to the Working Party have underlined on various occasions the serious inconveniences caused by the interference by private companies in determining the price of goods after contractual arrangements have been concluded by exporters and importers.

In addition to document TRADE/WP.4/R.376<sup>1</sup>, submitted by the delegation of France, which you mention in your letter, the Working Party received contributions from the Federal Republic of Germany (TRADE/WP.4/R.466) and the United States of America (TRADE/WP.4/R.415 and TRADE/WP.4/R.456) (copies enclosed).<sup>2</sup>

<sup>1</sup> Circulated in VAL/W/41

<sup>2</sup> Annexes 1-3 in English and French only

Problems related to price control are mentioned in paragraphs 8-22 of the French contribution, in paragraphs 9-14 of the document submitted by the Federal Republic of Germany, in paragraphs 5-8 of the first contribution by the United States and in sections 4 and 5 of their second document. The latter addresses more specifically the aspects of price control linked to customs valuation.

At its recent session, held on 26 March 1987, the Group of Experts on Procedures and Documentation, a subsidiary body of the Working Party, discussed the matter of pre-shipment inspection. The report on this item reads as follows:

'The Group of Experts received a number of reports on national actions concerning pre-shipment inspection (PSI) and the discussion taking place in the GATT Customs Valuation Committee. In respect of the price control elements of PSI, delegates expressed concern that this took place after negotiations between the buyer and seller had been completed and the contract (covering inter alia price) signed. The insistence on the provision of commercially confidential information and the costs and delays of such controls were highlighted as particular problems.

In noting that not all the countries requesting PSI were members of GATT and being aware of the problems faced by developing countries which had led to the introduction of these practices, the Group of Experts requested the secretariat to prepare from the working papers and reports submitted, a summary of the disadvantages and benefits found in the operation of PSI. This summary should then be sent to GATT, the International Trade Center (ITC) and UNCTAD.'

At its twenty-fifth session on 27 March 1987, The Working Party endorsed the views expressed by its Group of Experts.

The secretariat will prepare a summary document, as instructed by the Working Party, which will be transmitted to your Organization in due course."

ANNEX 1

UNITED  
NATIONS

**E**



**Economic and Social  
Council**

RESTRICTED

TRADE/WP.4/R.466  
7 January 1987

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE  
COMMITTEE ON THE DEVELOPMENT OF TRADE

Working Party on Facilitation of  
International Trade Procedures

IMPLEMENTATION OF ECE/FAL RECOMMENDATION NO.18 [068]

Recommended Measure 8.2 "Discouragement of pre-shipment inspection

Transmitted by the delegation of the Federal Republic of Germany

(Project 1.3.2.4 of the programme of work)

(Item 4(a) of the provisional agenda of Group of Experts No.2: Procedures and Documentation - Thirty-fifth session, 26 March 1987)

Previous documentation

- TRADE/WP.4/R.376, July 1985 (Transmitted by the Government of France)
- TRADE/WP.4/R.415, June 1986 (Transmitted by NCITD)
- TRADE/WP.4/R.456, December 1986 (Transmitted by SITPRO)

\* \* \*

I. Background

1. For several years, a number of developing countries have had not only the quality and quantity of the goods they buy from - mainly - industrialized countries inspected prior to shipment, which is customary in trade between industrialized countries as well, but also the appropriateness of the controlled prices.

2. For this purpose, they hire the services of private inspection companies with headquarters in the industrialized countries of export.

3. In the late 1970s/early 1980s, an increasing number of cases was reported by German exporters complaining about price controls. At the time, the Geneva-based Société Générale de Surveillance and its Hamburg-based

subsidiary, Control-Co GmbH, were the only ones acting as inspection companies. Strong opposition was raised to the inspection company's demand to disclose confidential business information (licence agreements, arrangements with input material suppliers, costing data).

4. The Government of the Federal Republic of Germany responded to such complaints by approaching the clients of such inspection companies, i.e. governments of developing countries and the Government of Nigeria in particular. However, promises to limit such control practices in some way or other have not materialized so far. International contacts within the European Communities or OECD in order to organize common action have not been successful either.

## II. Legislative measures taken in 1984

5. For this reason, the Government of the Federal Republic of Germany adopted as from 1 June 1983, para. 44(a) of the Foreign Trade and Payments Regulations subjecting price control activities by private inspection firms in the economic territory to authorization (Annex 1). The authorization requested by SGS-Control-Co was given subject to a number of conditions which were meant to put an end to excess price controls and to demands for the disclosure of confidential business information in particular. The conditions to be complied with are given in Annex 2.

6. After para. 44(a) had been adopted, few complaints were heard about the implementation of price controls.

## III. Renewed discomfort by German exporters in 1985

7. Year after year, the number of countries contracting the services of pre-shipment inspection companies, including Indonesia in 1985, have increased, which makes trade more difficult and costly.

8. The Bundestag enquiry of early 1985 recalls the dilemma that exporters have to accept price controls as long as they compete with other exporting countries that do not find fault with such price controls.

9. It should be noted however that the price control procedure undermines the major principles of law and economics:

- The freedom to make price arrangements guarantees the autonomy of private business.
- The principle of pacta sunt servanda is essential in the law of contracts.
- The market economy with its innumerable contracts freely entered into ensures that prices are "appropriate".

IV. Discussion of price controls at the international level

10. In the spring of 1986, the United States raised the price control subject with the GATT Valuation Committee.

11. In document TRADE/WP.4/R.376 submitted in July 1985, the delegation of France legitimately refers to the price control problem as

- a violation of international trade principles (such as pacta sunt servanda)

- time-consuming

- an inroad into business confidential information.

12. The delegation of the United States supported the French move in June 1986 (document TRADE/WP.4/R.415).

V. Position of the delegation of the Federal Republic of Germany

13. The delegation of the Federal Republic of Germany supports the point made by the delegation of the United States.

14. Two elements should be underlined:

- (a) Price controls interfere with the freedom of contract and loyalty to contracts which are elements essential in international trade.

- (b) Price controls represent an extraordinary severe impediment to trade because they mean delays, additional costs and bureaucracy.

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ANNEX 1

Unofficial translation of the Foreign Trade and Payments Regulations

CHAPTER V

- Services -

Title 1: Restrictions on active processing under contract

Paragraph 44 a

Restrictions pursuant to Sub-paragraph 1 of Paragraph 6 of the Foreign Trade and Payment Act

(a) The conclusion and fulfillment of contracts, including non-gratuitous contracts for services or work, between residents and non-residents shall require approval insofar as the subject of such contracts is the regular control of the prices charged for goods or services with destination of foreign economic territories.

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ANNEX 2

Conditions to be complied with by private control companies

2. The following authorization is subject to compliance with the conditions mentioned below:
  - 2.1 The valuations your company operating worldwide makes in the Federal Republic of Germany shall be conducted on the basis of the same criteria that are applied in other exporting countries. It shall be prohibited to deviate from those criteria to the detriment of resident exporters, who shall be informed of those valuation criteria in good time prior to the making of the valuations.
  - 2.2 Valuations shall be made taking due account of all technical and commercial aspects of any-one export transaction and of related freight services on the basis of market prices (competitive prices, list prices).
    - 2.2.1 Valuations of freight services shall be conducted on the basis of the relevant market price of the mode of transport (e.g. conference liners, outsiders, charter) selected jointly with the non-resident buyer of the goods and prevailing in the respective trading area. Objections to the mode of transport chosen by the exporter shall not be permitted.
    - 2.2.2 Insofar as it is not possible to ascertain a market price, the valuation shall be made by way of comparison with the market prices of those goods or services that are the closest in nature to those to be valued.
  - 2.3 Valuations must not include:
    - technical documents that are the subject of undisclosed patent applications or licence agreements,
    - contractual relations with input materials suppliers,
    - costing data including discount arrangements.

However, the above shall not be applicable if the exporter submits the aforementioned data voluntarily to illustrate an individual case.
  - 2.4 You shall be obligated to make the valuations without any delay for which you would be answerable and prior to shipment. The exporter shall be given an opportunity to comment if the contracted prices are not confirmed.

- 2.5 The exporter is to be provided without delay with the original and a copy of the control protocol.
- 2.6 It shall be prohibited to transmit the valuation data either to the governmental client or to any third party without the exporter's consent; this obligation shall be valid also for the staff you employ.

The valuations shall be made by you (i.e. the German subsidiary) and in the economic territory, if the exporter submits the items to inspection in the economic territory ("Bureau Veritas" and "Caleb Brett" only).

- 2.7 The Federal Office for Trade and Industry (BAW) shall be informed without delay of any circumstance that affects the length of the price control activities and the underlying of terms of reference.
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UNITED  
NATIONS

E



## Economic and Social Council

RESTRICTED

TRADE/WP.4/R.415  
5 June 1986

Original: ENGLISH

### ECONOMIC COMMISSION FOR EUROPE

#### COMMITTEE ON THE DEVELOPMENT OF TRADE

#### Working Party on Facilitation of International Trade Procedures

IMPLEMENTATION OF RECOMMENDATION NO.18: FACILITATION MEASURES [068]  
RELATED TO INTERNATIONAL TRADE PROCEDURES

#### Recommended Measure 8.2 "Discouragement of pre-shipment inspection

#### Transmitted by the National Council on International Trade Documentation (NCITD) of the United States of America

(Project 1.3.2.4 of the programme of work)

(Item 3(a) of the provisional agenda of Group of Experts No.2: Procedures and Documentation - Thirty-fourth session (22-23(a.m.) September 1986).

#### Previous documentation

- TRADE/WP./R.376 July 1985 (Transmitted by the delegation of France)

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1. The NCITD technical committee Foreign Entry Requirements and Practices made an inquiry among NCITD member companies regarding a pre-shipment inspection company operating in the United States. In addition to the inquiry, the committee held several meetings to discuss the inspection procedure of that company.

2. Exporters in the United States are having difficulty in meeting the contractual delivery requirements of importers in countries which require pre-shipment inspection. The mandate of the pre-shipment inspection company is to make physical inspection within seven to ten working days of notification that the material is ready. However, in practice exporters are sometimes waiting as long as seven weeks to have their commodities inspected.

There is no consistency within the pre-shipment inspection company and inspection times vary according to geographic area. The delays in completing the pre-shipment inspection are proving costly for exporters and even result in loss of sales in certain situations.

3. To complete the document inspection, the pre-shipment inspection company requires a copy of the ocean Bill of Lading and three copies of the final invoice, indicating the FOB value, freight charges, insurance, any other expenses and total. The company's mandate for completion of the document inspection is three working days; in actual practice the document inspection takes from ten days to two weeks. The Agreement Notice, issued by the inspection company, must be attached to the original shipping documents. The bank will only grant currency exchange when the Agreement Notice is provided. Exporters are forced to make shipment prior to receiving the Agreement Notice because of the length of time the company takes to provide the document. By making shipment prior to receiving the Agreement Notice, the exporter is taking the risk that he may not receive the latter.

4. Financial settlements are delayed. The pre-shipment inspection company does not comply with the time restrictions as laid down in the letter of credit; therefore, documents are presented late and the exporter has to bear the consequences of a letter of credit discrepancy.

5. The company requires a copy of the supplier's proforma invoice or telexed price quote; the importer's purchase order; the supplier's price list or price letter indicating the FOB value; the letter of credit, if applicable; and a statement regarding commissions or rebates, in order to make a price comparison. The company has requested exporters to substantiate the FOB value and to provide the formula used to arrive at the prescribed value.

6. Prior to the company's price inspection requirement, many exporters terms of sale were C&F or CIF (a delivered price); however, the company's price inspection procedure does not provide for inspection of a delivered price. The Inspection Company makes the price comparison on the basis of the FOB value. The FOB value used to invoice the importer must be the FOB value shown on the pre-shipment proforma/telex; there may not be any deviation. The freight charged to the exporter must be the freight as shown on the ocean/air freight bill. Therefore, it is now necessary to sell, to countries requiring pre-shipment inspection, on an FOB price plus actual freight.

7. Many importers do not want to be quoted on an FOB plus actual freight basis; they want to know the exact cost of the delivered merchandise. The exporter cannot always be certain of the exact freight cost that will prevail at time of delivery as the contracted price is often made six months in advance of shipment in order to take into account the time necessary for obtaining the letter of credit and for the product availability. The importer and the exporter are normally willing to accept a predetermined delivered price, each being prepared to accept any freight fluctuation. However, the pre-shipment inspection company will not grant an Agreement Notice based on a total delivered price.

8. The inspection company has been known to arbitrarily reject an exporter's price, requiring the exporter to lower the price before an Agreement Notice would be issued. Even after extensive documentation has been provided regarding prices, the company rejects evidence supporting exporter's claims against the company's arbitrary prices. The company is requesting information which the exporter considers to be confidential.

9. The NCITD Committee supports Recommended Measure 8.2: "Discouragement of pre-shipment inspection" of ECE/FAL Recommendation No.18.

10. The exporters appreciate the need for developing countries to control their currency flow and to have checks to eliminate fraud; however, they do not believe they should be required, by any organization, to provide confidential information regarding products and prices. The exporters further maintain that once a contract price has been agreed to, the contract price should be binding to the contracting parties without further review.

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ANNEX 3

UNITED  
NATIONS

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**Economic and Social  
Council**

RESTRICTED

TRADE/WP.4/R.456  
7 January 1987

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

COMMITTEE ON THE DEVELOPMENT OF TRADE

Working Party on Facilitation of  
International Trade Procedures

IMPLEMENTATION OF ECE/FAL RECOMMENDATION NO. 18 [068]

Recommended Measure 8.2 "Discouragement of pre-shipment inspection

Transmitted by the Simplification of International  
Trade Procedures Board (SITPRO)

(Project 1.3.2.4 of the programme of work)

(Item 4(a) of the provisional agenda of Group of Experts No. 2: Procedures and Documentation - Thirty-fifth session, 26 March 1987)

Previous documentation

- TRADE/WP.4/R.376, July 1985 (Transmitted by the Government of France)
- TRADE/WP.4/R.415, June 1986 (Transmitted by NCITD)

\* \* \*

1. Introduction

1.1 At the thirty-fourth session of the Group of Experts, discussion concentrated on what action could be undertaken at international and national levels to mitigate the effects of Pre-Shipment Inspection (PSI). This paper concentrates on the latter by making recommendations on how delegations could initiate work to seek easements to the documentation and procedural requirements of PSI and the type of bilateral arrangements that could be considered between individual countries.

## 2. Guidelines for Action by National Delegations

National Delegations can contribute to the mitigation of the formalities in the following ways:

### 2.1 Review of Procedures

National Delegations should research into the PSI practices in their own countries and as a priority discuss with inspection companies methods of how their documentation and procedures could be organized so that the inspection activity is completed more efficiently and within the required time scales. Suggestions on the content of such discussions are outlined below.

### 2.2 Documentation and Procedures

All documentation as far as is practical needs to be aligned to the United Nations layout key, allowing document preparation by reprographic and computer means. This has the added benefit of promoting acceptance of supporting commercial documents produced by such means.

Easements of the procedures normally required could be obtained for regular exporters. For example, the inspector could issue the inspection certificate immediately rather than its being processed and sent subsequently by the main office. The research indicated above should reveal other potential procedural improvements.

### 2.3 Monitoring Delivery

Monitoring of PSI procedures needs to be continuous. When changes are announced they should be examined to ensure that potentially overburdensome requirements, which might impede the efficient application of procedures by exporter and inspection company alike, are raised in the appropriate forum for reconsideration. Such monitoring should be undertaken by interested government departments, trade facilitation bodies and trade associations.

### 2.4 Communication

Many of the problems associated with pre-shipment inspection arise from inadequate communication and misunderstanding of what is required. In the United Kingdom, improvements were achieved as follows:

Inspection Companies published guides to the PSI procedure which included details of the internal organizational structure. Administration for one company was reorganized on a regional rather than a commodity basis. The use of facilities such as telex, facsimile and computers in lieu of standard documentation was permitted.

Equally SITPRO published guides and leaflets to help exporters understand and comply with PSI procedures whilst maintaining contact with the United Kingdom major inspection companies which enabled queries of a general nature to be resolved.

Also the Department of Commerce and Industry, through its policy groups and overseas posts, endeavour to ensure that updated information is available to exporters.

### 3. Bilateral Agreements

3.1 Further national action can be undertaken at a bilateral level - and it could vary with each PSI country depending on the circumstances. The purpose of such action is to reduce the level of PSI required and suggestions are indicated below. Ideally these should be "sold" to the importing country on the basis that they are obtaining an equal or improved PSI service but at a cheaper cost.

### 3.2 INSPECTION

#### 3.2.1 Exemptions

The exemption from inspection of consignments on a cost or commodity basis should be considered. For example, the exemption of consignments under £15,000 FOB would allow the inspection company to concentrate its resources on a smaller list of inspections and so reduce working time, as well as giving the importing country the opportunity to keep its import costs down and to reduce agency payments.

Commodity exceptions will vary for each market and again research will determine the potential candidates for negotiation.

#### 3.2.2 Authorized Consignors

A system of "authorized exporters" could be established. Companies with a clean history of inspections over, say, 12 months could have inspection waived over an annually increasing proportion of consignments provided their record remains clean.

### 3.3 PRICE COMPARISON

#### 3.3.1 Competitive Contracts

Automatic exemptions for price comparison should apply to government, major and progress payment contracts as well as internationally funded contracts. All of these will have been subject to competitive tender and thus to a measure of price comparison. These would have an agreed overall contract price, with part-shipments, and there is no justification for further price comparison activity for individual consignments.

#### 3.3.2 Export Price Lists

It should be feasible to operate a scheme whereby export price lists valid for a period are lodged in the importing States and subsequent shipments are not subject to individual price comparison unless the invoice price

changes. Inspection companies would initially have to give an "opinion" on such lists but once again the opportunity for the importing country to save agency payments exists.

4. Conclusion

Given that pre-shipment inspection will continue, with or without price comparison, the facilitation benefits accruing from the rationalization and simplification of procedures are obvious. The above guidelines and suggestions have been found to be effective, and can usefully form the basis of a work programme for delegations.

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