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Committee on Customs Valuation

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EXPERIENCES WITH PRESHIPMENT INSPECTION

Communication from the United States

The following communication from the United States delegation was received on 7 May 1987.

General

In response to a Federal Register notice issued in September 1986 requesting information about preshipment inspection practices, U.S. exporters indicated three basic types of difficulties with preshipment inspection companies and their activities:

- (1) the time-consuming and costly nature of adhering to preshipment inspection requirements; that is, the administrative costs, delays in clearing shipments with the companies and risks associated with shipping goods prior to receiving a "clean report of finding";
- (2) the function of these companies to rule on the acceptability of prices of U.S. exports and these companies' mandate to block the shipment of U.S. exports whose prices the companies deem unacceptable; and
- (3) the accumulation of vast amounts of business confidential information by preshipment inspection companies and the potential for its abuse.

These problems and the use of preshipment inspection companies by a growing number of developing countries led to the filing, in September 1986, of a petition for retaliatory action under Section 301 of the Trade Act of 1974 against five of the twenty-six countries using such services.

In response the United States Government adopted on October 21, 1986 a comprehensive five-part action plan to investigate and address problems connected with the activities of preshipment inspection companies. The plan consists of: (1) an investigation by U.S. International Trade Commission (USITC) of the impact of preshipment inspection on U.S. commerce; (2) bilateral consultations with all countries using preshipment inspection companies, alerting them to our concerns; (3) monitoring the activities of preshipment

inspection companies by putting them in touch with U.S. exporters experiencing difficulties; (4) consideration of possible domestic legislation or other appropriate action to limit preshipment inspection activities within the United States, and (5) pursuit of a multilateral solution by raising the issue in this Committee and other appropriate multilateral fora.

As to the status of the plan (1) the report by the U.S. International Trade Commission is expected to be complete by late July, (2) bilateral consultations have failed to result - with the exception of a few countries - in definitive actions to eliminate or minimize the problems caused by preshipment inspection companies; (3) monitoring and continued dialogue between the U.S. Government, the preshipment inspection companies and U.S. exporters has resulted in improvements in the actual inspection process, but not in the problems surrounding price/valuation of products, (4) legislation was introduced by the U.S. House of Representatives for inclusion in the trade bill (H.R. 3) which would - if made law by both houses of Congress - require that preshipment inspection companies be licensed and would establish the parameters for legitimate preshipment inspection company activities; and (5) we expect the GATT Committee on Customs Valuation to address those aspects of the preshipment inspection problem which are relevant to its work.

Preshipment Inspection and Valuation

Due to serious capital flight problems, limited foreign exchange, and in some cases inexperienced customs services unable to detect fraud in import documents, preshipment inspection companies have been hired by the Central Banks of a growing number of developing countries to perform many of the functions - including the valuation of goods for customs purposes - normally conducted by customs services.

The inspection of all goods destined for these countries to ensure that their quality and quantity are in line with the specifications of the import license is seen by them as important. However, "price comparison" is viewed by the developing countries and the preshipment inspection companies as the most critical function performed during inspection. According to one company, the objective of the price comparison is "to form an independent opinion on the total foreign exchange outlay involved in the importation of goods described in an inspection order and to establish whether the total of seller's final invoice and the various price elements correspond with the acceptable limits to the export market price generally prevailing in the country of origin/supply, or in the relevant international market, where applicable."

As part of the price comparison, U.S. exporters have indicated that they are requested to provide preshipment inspection companies with their contract with the buyer, the pro forma invoice, packing list, the letter of credit, the suppliers's or manufacturer's invoice (if the exporter is not the manufacturer of the product), the export price list, the domestic trade price list and any relevant descriptive catalogs or data sheets. After all documents are received and a physical inspection of the goods is performed, the preshipment inspection company issues a "report of findings" to the foreign government indicating that the quality and quantity of the goods being shipped matches information on the import license and that foreign exchange up to the amount indicated on the license is acceptable. Since discrepancies in either quality or quantity are notified to the exporter prior to shipment for correction, a "non-clean" report of findings generally indicates that the price agreed upon between the buyer and the seller and originally indicated in the import license is unacceptable, and reports an amount of foreign exchange which the preshipment inspection company believes would be released by the foreign government for the transaction. In addition, customs duties (as well as any value-based taxes) are assessed on the basis of the suggested price/value of the goods. Although the foreign governments's Central Bank makes the final decision on the amount of foreign exchange to be released for each transaction and the appropriate value which to base customs duties and taxes, it appears that the preshipment inspection companies' rulings are usually accepted. U.S. exporters have indicated that their prices for goods sold in one transaction are often compared by the preshipment inspection companies to previous transactions to the same countries and in some cases to neighboring countries. Although preshipment inspection companies often insist on one export price, U.S. exporters indicate that there are circumstances which justify various prices for the same goods. Moreover, exporters are told not only that their prices may be "too high or too low", but what profits are acceptable in various transactions. The power of the preshipment inspection companies to ultimately prevent the release of foreign exchange at the price agreed upon for the goods between buyer and seller and, therefore, to possibly block preshipment of the goods apparently affects exporters in an ongoing basis. U.S. exporters often feel compelled to alter their prices on current as well as future shipments or abandon the sale of the goods to certain countries altogether.

Possible Action in the Committee

In drafting the Customs Valuation Code, the signatories recognized the serious restrictive effects that customs valuation practices could have on international trade and developed a code which has resulted in a fair, uniform and neutral system conforming to commercial realities. The use of preshipment inspection companies by a growing number of countries to assist not only in preventing capital flight resulting from fraudulent valuation practices, but also to establish "acceptable" prices for valuation purposes - even in the absence of fraud - is of great concern to the United States.

We recognize that only one aspect of the preshipment inspection issue - that is, the pricing/valuation function - is of specific concern to this Committee. More important, we are aware that none of the twenty-six countries utilising preshipment inspection services are signatories to the Customs Valuation Code. However, seventeen of them are contracting parties to the GATT. Moreover, four of those seventeen, as well as one other country not a member of the GATT, are observers to the Code. In line with the provisions of the Code, signatories - either alone or in cooperation with the Customs Cooperation Council - have provided customs valuation training to many of the countries using preshipment inspection companies in the hope that they would eventually become signatories to the Code, thereby strengthening international discipline in the customs valuation area.

Given the fact that one aspect of the preshipment inspection issue directly affects the signatories to the Customs Valuation Code, that the valuation practices of preshipment inspection companies on behalf of seventeen GATT signatories may be inconsistent with the provisions of Article VII of the GATT, and that other aspects (such as the delays and additional burden on international trade) may be of concern within the broader context of GATT, the Committee might want to prepare a report to the GATT Council for consideration of appropriate action in the GATT. This subject may, for example, be appropriate for examination in the Non-tariff Measures Negotiating Group in the Uruguay Round or for the Negotiating Group examining the GATT Articles or, apart from the Uruguay Round process, could be examined in a separate Working Party.

In addition, the United States would like to endorse a proposal that was recently made in the U.N. Economic Commission for Europe's Working Party on Facilitation of International Trade Procedures which has also been examining the preshipment inspection issue. That is, the concept of developing an international code of behavior for preshipment inspection. While much thought needs to be given to this, several countries, some of whom are signatories to the Valuation Code, already ban the practice of preshipment inspection have taken action to limit preshipment inspection activities or - as in the case of the United States - are currently considering possible action. It is our view that signatories to the Valuation Code who are, by definition, committed to a non-arbitrary system of valuation for customs purposes, might want to consider the development of some guidelines for their respective actions on preshipment inspection. Such action would be aimed at encouraging and developing a multilateral rather than unilateral approach to the issue of preshipment inspection. This would, hopefully, prevent diversions in international trade which might result from each signatory taking different approaches.