

# GENERAL AGREEMENT ON

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## TARIFFS AND TRADE

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Committee on Customs Valuation

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### PRESHIPMENT INSPECTION PROGRAMMES

#### Submission of the Republic of Indonesia

In response to the Committee's invitation (VAL/M/19, paragraph 64), the delegation of Indonesia in its capacity as observer, has submitted a paper setting forth the position of the Government of Indonesia in regard to the employment of preshipment inspection companies. The document, which was distributed at the meeting of 11 May 1987, is reproduced below.

#### A. Significant Benefits Have Resulted From Indonesia's Preshipment Inspection Programme

The Government of Indonesia established its preshipment inspection programme by Presidential Instruction No.4 of 1985. Unlike a number of other countries, where programmes are designed to curtail capital flight and thus enforce foreign exchange controls, Indonesia, which does not maintain such controls, implemented its programme to speed up the flow of imports and exports in order to promote national economic development. In particular, the programme aims to increase the country's non-petroleum exports in order to lessen its dependence on oil.

The Government of Indonesia's preshipment inspection programme is but one of many efficiency measures mandated by Presidential Instruction No.4. In conjunction with that programme Indonesia also has simplified shipping documentation and cargo handling procedures, and reduced harbor and mooring fees. The overall effect has been dramatic: the cost of doing business with Indonesia has been greatly reduced, thereby making it easier for companies exporting products to Indonesia. As commented by East Asian Executive Reports (March 15, 1987) at p. 18: Since 1985 "import and export costs (in Indonesia) have gone down more than 20 percent. Generally, (Presidential Instruction No.4) has greatly expedited the processing of sea cargoes ..." See The Wall Street Journal (April 20, 1987) at p. 23 (the "result has been more efficient import-processing").

The time for goods to clear customs in Indonesia has been reduced from an average of 21-30 days to 2-3 days, resulting in an enormous savings in the cost of interest, storage, and port charges, not to mention the benefits of less pilferage and damage to goods. In addition, it has been estimated that under Indonesia's programme the administrative burden of clearing customs has been reduced 75 percent through less documentation, much of which can now be processed while the goods are in shipment as opposed to after they reach their port of destination.

Another benefit has been the reduction in smuggling and counterfeit goods, which is crucial, for example, to Indonesia's recent efforts to increase protection for intellectual property. Furthermore, preshipment inspection has enabled the Government of Indonesia to collect duties and taxes more fully because they are calculated on the actual value of the goods. This in turn has allowed the Government to reduce tariff rates as it did in October 1986.

In sum, Indonesia's preshipment inspection programme has been and continues to be an unqualified success in promoting international trade.

B. Indonesia's Program Is Entirely Consistent With Its Obligations Under The GATT

Article VII of the General Agreement on Tariffs and Trade provides that "the value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values." "Actual value" is generally defined as "the price at which, at a time and place determined by the legislation of the country of importation, and in the ordinary course of trade, such or like merchandise is sold or offered for sale under fully competitive conditions."

Presidential Instruction No.4 of 1985 is entirely consistent with this article of the GATT. Under Indonesian law "the prevailing price of the goods concerned at the country of origin" is used for customs valuation. This is not in any way an "arbitrary value," but is similar to national concepts of value used without question by most developed countries for thirty years after the GATT came into force. The duty is assessed, as the GATT expressly allows, on the basis of the value of the goods not in Indonesia but in the country that is exporting the goods to Indonesia. Moreover, the value of the goods is that prevailing as of the time of the particular transaction.

To assist in the determination of the prevailing export market price the Government of Indonesia has contracted with a private Swiss Company, Société Générale de Surveillance, S.A. (SGS) to provide preshipment inspection services outside Indonesia. (We note that there are at least two other private entities that provide preshipment inspection services on behalf of foreign governments, Intertek Services International, Ltd. and Bureau Veritas.) SGS determines whether the price identified in the invoice is within reasonable limits of the prevailing export market price for that particular product in the country of supply under the same terms and conditions of sale. The price comparison is conducted with reference only to prevailing export market prices in the country of supply.

Nothing in the GATT would preclude a contracting party from relying on a private company to assist in making price comparisons for the purposes of customs valuation. All governments, of course, contract for goods and services in the private sector and we do not see that customs inspection is somehow an inherently sovereign function. In any event, Indonesia's preshipment inspection programme is actually run by P.T. Superintending Company of Indonesia (Sucofindo), a corporation that is majority-owned by the Indonesian Government. Sucofindo is responsible for inspection of all exports. It has assigned certain of its inspection functions with regard to imports (most of which are performed outside Indonesia) to SGS. SGS therefore provides technical expertise and administrative assistance to what is otherwise a governmental programme.

At the November 10, 1986 meeting of the Customs Valuation Committee the representative of the United States stated that preshipment inspection companies sometimes make arbitrary price determinations and therefore have the ability to abrogate contractual agreements between importers and exporters by rejecting prices considered to be unreasonably high or low. We could not agree to the implicit assumption that the determination by SGS of the prevailing export market price is somehow arbitrary merely because it varies from the contract price in a specific transaction. In any event, because the Indonesian Government does not maintain foreign exchange controls, SGS is not in any position to affect the price paid by the Indonesian purchaser.

Under Indonesia's preshipment inspection programme, payment by the purchaser is made on the price specified on the invoice as agreed to by the buyer and seller, not on the SGS assigned value. Given the free flow of foreign exchange the SGS value does not have any other effect on the import transaction because SGS does not refuse to issue its inspection report (provided the transaction otherwise complies with Indonesian laws and regulations). Preshipment inspection is of importance to the Government of Indonesia for the efficient administration of customs and imports but has little, if any, effect on the private sector transaction.

C. The Customs Valuation Code Leaves Developing Countries Vulnerable to Trade Malpractices

Neither the Republic of Indonesia nor any of the approximately 24 other countries that have preshipment inspection programmes<sup>1</sup> is a signatory of the Customs Valuation Code, and for a simple reason. The Code in the first instance looks not to a prevailing export market price standard, but rather to "the price actually paid or payable for

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<sup>1</sup>Those countries include: Liberia, the Congo, Ghana, Nigeria, Zambia, Guinea, Ivory Coast, Kenya, Madagascar, Zaire, Uganda, Tanzania, Rwanda, Burundi, Angola, Jamaica, Haiti, Suriname, Ecuador, Venezuela, Bolivia, Paraguay, Guatemala and Equatorial Guinea.

the goods when sold for export to the country of importation." If applied, this standard would severely limit the means by which developing countries can deal with foreign debt and capital flight problems, fraud and corruption, and other trade malpractices.

The debt crisis confronts developing countries throughout Asia, Africa, and Latin America with severe budget and trade problems, which have been heightened as a result of capital flight. The over and under-invoicing of imports and exports has become a major vehicle in international trade for both capital flight and tax evasion. This mis-invoicing adversely affects the developing countries by reducing foreign exchange receipts, thus requiring a reduction in imports either by imposing trade barriers or by depreciating the currency. Moreover, the significant revenue losses from under-invoicing can cause a reduction in public expenditures, thereby restricting opportunities for economic growth, or forcing an increase in duty rates. The overall results are inimical to international trade.

Preshipment inspection programmes are an effective way for the developing countries to deal with these kinds of trade malpractice. Far from inhibiting international trade, such programmes have demonstrably increased trade. Indonesia is a classic case in point. For these programmes to work, however, it is necessary to look behind the price paid by the importer of the goods to the exporter in any particular transaction to make certain, for example, that the price paid is not artificially low as a result of collusion. Yet, except as Article 17 might apply, the Customs Value on Code would deny signatory States the right to do this, even though they have the most legitimate objectives. Such a requirement ignores the realities of trade in developing countries and effectively denies their governments a means of dealing with trade malpractices. Until the Code takes into account such trade malpractices and provides a means for developing countries to respond to them effectively, it is difficult to expect that the number of signatory developing countries to increase, particularly those which preshipment inspection programmes.

D. The Issue of Preshipment Inspection Programmes Is Best Suited to a Multilateral Dialogue

Because preshipment inspection programmes are in place in at least 25 countries - none of which is a signatory of the Customs Valuation Code - any dialogue regarding these programmes within the GATT Customs Valuation Committee cannot possibly take into full account the special needs of the developing countries. We submit, therefore, that any such dialogue will be more properly and fruitfully pursued in the framework of the General Agreement on Tariffs and Trade to which most of the countries with preshipment inspection programmes, including Indonesia, are parties.

Similarly, we could not accept any effort to over-regulate preshipment inspection programmes and thus, in effect, to impose unilaterally certain provisions of the Customs Valuation Code on non-signatories. Rather than addressing the subject of preshipment inspection on the national level, because the matter is one of international trade and therefore of global impact it is far more appropriate for it to be addressed within the multilateral context of the GATT.

National legislation, therefore, should follow international agreement. Although we support many of the provisions in the omnibus trade bill (H.R.3) that is currently pending in the U.S. Congress, we could not agree any provision authorising an administrative appeal to the U.S. Government of a preshipment inspection price determination. We believe that such regulation would purport to bind the sovereign right of other countries to regulate their flow of trade, and to determine the valuation of imported goods.