

GENERAL AGREEMENT ON

RESTRICTED

VAL/M/20

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Special Distribution

TARIFFS AND TRADE

Committee on Customs Valuation

MINUTES OF MEETING OF 11 MAY 1987

Chairmen: Mr. P. Nicora (France) and Mr. D. Satherstrom (Canada)

1. The Chairman (Mr. P. Nicora) reverted to an earlier request from the People's Republic of China to be represented as observer in the Committee.

2. He recalled that the request was contained in a communication dated 27 October 1986 and that at the last meeting some Parties had requested time for reflection. In the meantime the People's Republic of China had obtained observer status in other MTN Code Committees. He asked whether the Committee could now grant observer status on the same conditions as in these other Committees.

3. The representative of the United States stated that his delegation supported the request for observer status. In doing so, he pointed out that his delegation did not necessarily take the same attitude for all MTN Agreements. In the United States' view, agreement on observer status to any country in any Committee should be linked to that country's ability to eventually adhere to the Agreement. He thought it was a good possibility of that in the present case and for this reason his delegation agreed to the request.

4. The representatives of the European Economic Community and Czechoslovakia welcomed the participation of the People's Republic of China as observer and hoped this would facilitate its eventual accession to the Agreement.

5. The representatives of Japan and Sweden (on behalf of the Nordic countries), also supported the request.

6. The representative of Brazil recalled that his delegation had stated in other GATT fora that it attached great importance to the participation of China as a GATT contracting party. He therefore welcomed and supported the request to become an observer in this Committee.

7. The Committee agreed to grant observer status to the People's Republic of China on the same conditions as in other MTN Code Committees (see e.g. also TBT/M/24, paragraph 4).

Election of Officers

8. The Committee elected Mr. D. Satherstrom (Canada) Chairman, and Ms. M. McDonald (Australia) as Vice-Chairwoman for 1987.

Adoption of the Agenda

9. The following agenda was adopted:

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A. Accession of further countries to the Agreement

(i) Mexico

10. The Chairman stated that he was not aware of any further developments since the last meeting apart from the communication circulated in VAL/29, indicating that Mexico expected to accede to the Agreement in the course of May 1987.

11. The Committee took note of the statement.

(i) Spain

12. The representative of the European Economic Community stated that the Spanish Council of Ministers had approved a proposal in April 1987 to withdraw from the Agreement in its individual capacity. The necessary follow-up steps had been taken.

13. The Committee took note of the statement.

(i) Turkey

14. The representative of Turkey stated that work relating to ratification was continuing. His delegation would inform the Committee in due time of the advancement of the ratification procedures.

15. The Committee took note of the statement.

B. Report on the work of the Technical Committee

16. The Chairman of the Technical Committee (Mr. P. Haaland, Norway) gave an oral report on the thirteenth session of the Technical Committee, held in Brussels, 2-6 March 1987, the full report of which was contained in CCC Doc. 33.930. As usual the meeting had been very well attended. Most of the Parties had been present, together with observers from nineteen countries and two international organizations (GATT and the International Chamber of Commerce). In connection with intersessional developments, the Committee had been informed that the Secretary General of the Customs Co-operation Council had convened a meeting of the Chairmen of the various Committees of the Council. The need for a clear identification of the priorities of the Committee's work and a planned time frame to achieve the objectives had been the main issues for discussion. It had been decided that the Committee agendas should be drawn up on the basis of priorities established by the Council. In this regard the Technical Committee had made the point that it had to be mindful of the contents of Annex II to the GATT Valuation Agreement. As regards efforts to promote wider membership of the Agreement, the Committee had also been informed that the Director of Valuation had had very useful senior-level discussions in Indonesia, Malaysia, Singapore and Thailand. It appeared that countries of South East Asia were undertaking internal reviews of their valuation systems with the view to possible accession. The decision, in this respect, however, was influenced by their regional obligations. In India, secretariat officials had had a fruitful exchange of views with the Collectors of Customs. The Committee had been informed that the first meeting of the Joint Expert Group on Customs Valuation Fraud had been held from 19 to 21 January 1987. From the Report of the meeting (CCC Doc. 33.765), it was evident that the Group had identified and had had preliminary discussions on a number of important items. Furthermore, the Group looked forward to fruitful and concrete results to be achieved at its next session. On technical assistance, the Technical Committee had taken note of information document 33.797 containing completely revised and updated information on the technical assistance programme. As regards future activities, the Committee had been informed that the Seventh Training Course on Valuation would be held in Buenos Aires, from 30 March to 10 April 1987 for Spanish-speaking Latin American countries, and the Eighth Training Course would be held at the Council Headquarters from 25 May to 5 June 1987. Another training course was also intended in the French language, to be organized in Africa during the fourth quarter of 1987.

17. Turning to technical questions examined by the Technical Committee, its Chairman went on to deal with the following points:

(a) Application of the decision on the valuation of carrier media bearing software for data-processing equipment: This problem concerned difficulties being encountered in distinguishing the cost or value of the carrier media. At its twelfth session the Committee had agreed that if precise figures were not available, estimates of the two values could be

¹ See paragraph 69.

made. Accordingly, it had instructed the secretariat to prepare an instrument setting out guidelines on the subject. After a lengthy discussion on the draft commentary, it had been decided to revise the text to reflect amendments approved and comments made;

(b) Treatment of quota charges under Article 1: The Committee had examined examples of various types of quota charges. It had recognized that the term "quota charges", in its applicability within the Code, was subject to wide interpretation, which resulted in difficulty for Members to arrive at a consensus opinion. The Committee had further agreed that it would not be productive to pursue the examination of examples and that the issue should be deleted from the its agenda to allow administrations time for further reflection on the basis of practical experience;

(c) Meaning of the expression "the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable": The secretariat had prepared a document containing a draft advisory opinion on the meaning of this expression. At its next session the Committee would take up the question of expanding the scope of that document to cover examination of the rôle of Customs and the rôle of the importers in determining the "influence of relationship on the price";

(d) Determination of profit margins for use in deductive or computed value methods: The Committee had held a preliminary discussion on this question with special emphasis on the term "usual amounts for general expenses and profit margins". It had agreed to solicit information on national practices relating to the collection of data and other relevant issues and, upon receipt of such information, to prepare two documents, one on the deductive value method, the other on the computed value method.

(e) Meaning of the expression "activities undertaken by the buyer on his own account, after purchase of the goods but before importation": In response to the secretariat document issued during the inter-session on this subject, two viewpoints had emerged: (i) that the work performed after sale changed the nature of the goods originally sold so as to invalidate the application of Article 1; and (ii) that the work performed after sale could be considered an activity covered by Article 8.1(b), to be added to the sales price and with Article 1 still being applicable. The Committee had also examined a practical example on the subject submitted by a Member. The majority had been in favour of determining the Customs value through the application of Articles 1 and 8 and had felt that no specific instrument needed to be drafted. The Committee agreed that for the next session, other examples could be introduced under this item with a view to formulating an advisory opinion.

(f) Examination of the expression "the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued": The secretariat document which had analyzed the practical implications of conditions and considerations

appearing in Article 1.1(b) had discussed two approaches: (i) that it would be extremely difficult to quantify the value of such a condition or consideration and that, therefore, the customs value could not be determined on the basis of the transaction value; and (ii) that, if the value of a condition or consideration could be determined, it could be considered as an invisible part of the price paid or payable. The Committee had, after discussing at length the legal and practical aspects of an adjustment for conditions and considerations, instructed the secretariat to prepare a draft instrument for the next session, taking into account the comments made.

(g) Conversion of currency in cases where the contract provides for a fixed rate of exchange: This question related to sale contracts which established a fixed rate of exchange between the buyer and the seller on the one hand and the requirement of conversion of currency for valuation purposes by the administration on the other. The Committee's discussions had focussed on the cases in which a rate of exchange fixed contractually could differ considerably from the rate used for customs valuation purposes, and the argument that the payment at a fixed rate of exchange might constitute the price paid or payable. It had been decided to revise the secretariat document for the next session taking into account the comments made.

(h) Need for guidelines on the application of Article 17: The Committee had been informed that during the inter-session the secretariat had received a submission by the CARICOM and supporting comments by the Belizean Administration on the need for guidelines for the application of Article 17 relating to the rights of Customs administrations within the context of fraudulent cases. The Committee, while drawing attention to Advisory Opinion 10.1 which clarified that an administration could not be required to rely on fraudulent documentation, expressed the view that this matter should be raised before the Expert Group on Customs Valuation Fraud.

18. Concluding his report, the Chairman of the Technical Committee said that technical questions referred to above had been included in the agenda for the Fourteenth Session to be held from 5 to 8 October 1987. Dr. A. Gancz (Austria) had been elected Chairperson, and Mr. D.E. Zolezzi (Argentina) and Mr. B. Brimble (Canada) first and second Vice-Chairmen respectively for the coming sessions of the Technical Committee.

19. The Committee took note for the report.

C. Information on implementation and administration of the Agreement

20. The Committee took up questions concerning the following countries:

(i) Argentina

21. The representative of Argentina informed the Committee that the competent technical body had submitted the relevant regulations to the

Ministry of Economy for approval. The Committee would be kept informed of further developments.

22. The Chairman suggested that the Committee revert to Argentina's implementing regulations and replies to the checklist once these became available, possibly at the next meeting. It was so agreed.

(ii) Brazil

23. The representative of Brazil introduced document VAL/1/Add.20/Suppl.1 which contained the non-official English translation of the Acts notified previously in Portuguese (document VAL/27), as well as responses to the revised checklist of issues concerning national legislation, VAL/2/Rev.2/Add.3. If there were questions they should be communicated in writing to his delegation in good time.

24. The Chairman suggested that the Committee revert to the Brazilian legislation at the next meeting. Delegations having questions should provide these in writing through the secretariat, not later than 1 October 1987, so that replies could be given as quickly as possible and be circulated in writing before the next meeting in case further clarifications were required. It was so agreed.

25. Concerning the Brazilian reservation under paragraph I:3 of the Protocol regarding officially established minimum values and reference prices, the representative of Brazil recalled previous statements and documentation and confirmed that, as had already been foreseen in Article 2 of each of the two resolutions which had introduced reference prices for polycarbonates and rotary offset machines, these prices had been withdrawn as of 31 January 1987.

26. The representative of the United States recalled that paragraph 2 of the relevant Committee Decision, provided that, if so requested, Brazil would review the possibility of removing products from the lists referred to, and would afford adequate opportunity for consultations at the request of any other Parties whose trade in specific products was experiencing difficulties, with a view to reaching a mutually satisfactory agreement within six months. On 10 November 1986 his delegation had presented a list of eight products subject to minimum values, nineteen subject to reference prices, and a number of other products where there was either a combination or special problems. Six months had elapsed without response and he requested that the competent Brazilian authorities be reminded.

27. The representative of Brazil stated that his authorities were still reviewing the list put forward by the United States delegation, in the light of the obligations referred to and also in the context of the complementary rules dealing with implementation and administration of the Agreement.

(iii) Czechoslovakia

28. The Chairman noted that questions from the European Economic Community had been received recently. The representative of Czechoslovakia stated that he could answer these but nevertheless was ready, as suggested, to follow a written procedure (see paragraph 35).

29. The representative of Czechoslovakia recalled documents circulated in the VAL/1 and VAL/2 series. The Decree of the Ministry of Foreign Affairs (ref. VAL/1/Add.18/Suppl.1) had put the Agreement into force as of 27 June 1984. This Decree, which reproduced the entire Agreement, including commentaries and the Protocol, constituted a binding legislation of general application and, had been published in the Czechoslovak Collection of Law. This was the current standard for implementation in Czechoslovakia. The Decree of the Federal Ministry of Foreign Trade implementing Customs Act No. 44 had, inter alia, introduced changes in implementing customs valuation provisions in accordance with the Agreement. The Instruction on customs valuation of 18 August 1986 of the Central Customs Administration had established specific customs regulations. The provisions of the Agreement had been incorporated herein, in many cases without alteration of the text. The three legal texts, together with the Customs Act, as revised by Law 117 of 27 October 1983, constituted the implementing legislation of the Agreement. The two most important objectives of the implementing legislation were to establish quick, easy, predictable treatment for routine cases and provide appropriately sensitive treatment for the difficult ones. The legislation emphasized the use of objective facts in determining value so as to minimize the subjective and discretionary elements in valuation. The definition of value rested on a positive concept, i.e. calculation - not judgement. He hoped that all implications of the Agreement had been understood correctly by Czechoslovak Customs officials and that his country's administration of the Agreement would promote predictability and equity for traders.

30. The Chairman encouraged delegations having further questions on the Czechoslovak legislation to raise them as soon as possible, with a view to completing this examination at the next meeting.

(iv) Republic of Korea

31. The representative of the Republic of Korea referred to the relevant documentation in the VAL/1/Add.19 and VAL/2/Rev.20 series including in particular VAL/1/Add.19/Suppl.2/Corr.2. His delegation had recently received questions from the EEC and the United States. He agreed to a suggestion by the Chairman that replies to these questions be circulated prior to the next meeting.

(v) Lesotho

32. The Chairman noted that no questions had been received prior to the meeting. He also recalled that amendments to certain sections of the legislation would be made available (ref. VAL/M/49, paragraph 5).

33. The representative of Lesotho stated that the relevant sections referred to¹ had been completed and would be circulated to the Committee in due course.

34. The Chairman suggested that once the secretariat had had the opportunity to circulate these amendments, other members be invited to submit questions they might have as soon as possible, with a view to reverting to this matter at the next meeting. It was so agreed.

(vi) General

35. The Committee took note of the statements made under this agenda item and agreed that questions and answers be circulated informally as far in advance of the its next meeting as possible, with a view to reverting to any specific points of substance.

(vii) Status of application of the Committee decisions on interest charges (VAL/6/Rev.1) and computer software (VAL/8)

36. The Chairman noted that the most recent information was given in VAL/W/34/Rev.3.

37. The representative of the United States stated that new adherents to the Agreement should as a matter of course provide the Committee with information on their application of these two decisions. The representative of the European Economic Community stated that each Party should notify the date from which the decision on interest charges would be applied but that some Parties had not provided this information. The Chairman suggested that the item be retained on the agenda for one more meeting. Parties which had not yet done so, should furnish the required information. At the next meeting the Committee might thus agree to delete this agenda item and refer to the two decisions as appropriate. The Committee so agreed.

D. Information on the situation with regard to the application of the provisions of the Agreement by India

38. The Chairman recalled that the Committee had agreed to revert to this matter at the present meeting and that, if necessary, bilateral consultations be held in the meantime. Written questions from the United States had been circulated through the secretariat on 7 May 1987. A communication from the delegation of India had been circulated on 11 May 1987 as VAL/30. In this document India requested a further delay of three months, i.e. until 1 October 1987, before applying the provisions of the Agreement. He suggested that the Committee focus its attention on this request.

39. The representative of India stated that the necessary enabling legislation was to have been dealt with in the current session of Parliament. However, due to unforeseen circumstances this had not been

¹Subsequently distributed as document VAL/1/Add.21/Suppl.1.

possible. It was expected that the legislation would be introduced at the forthcoming session, in the second half of July and August 1987. He had therefore requested a further three-months extension to enable his authorities to complete the necessary procedures for implementing the provisions of the Agreement. As to questions from the United States delegation which had not been dealt with already in VAL/30, he stated that the relevant legislation and regulations would be notified once the legislation was introduced. He understood that detailed implementing regulations formed part of the normal procedure for implementation and administration of the Agreement but would seek confirmation on this point. Moreover, his understanding was that the three-months extension he was seeking would cover not only the completion of the legislative procedure but also the other necessary administrative and organizational procedures for the application of the Agreement as of 1 October 1987.

40. The representative of the United States stated that he had no instructions which would permit him to respond to the Indian request. The matter had to be addressed before 1 July 1987 but not necessarily at the present meeting.

41. The representative of Brazil stated that the most important issue was to check the willingness of a government to apply the provisions of the Agreement. His delegation did not believe that the request showed a lack of such willingness on the part of the Government of India. Moreover, insofar as Brazil was concerned, no trade was experiencing difficulties that would not have been experienced had India applied the Agreement. His delegation was therefore ready to grant the requested three months delay.

42. The representative of the European Economic Community stated that it was unfortunate that there was a need to seek this extension. However, his delegation was not unfavourably inclined towards the request and understood the background. On the other hand, he would like to know that, despite these problems there was an intention on the part of the Indian administration to apply this Agreement de facto in anticipation of provisions becoming legal.

43. The representative of Hungary stated that his delegation did not consider the request to reflect any change of intention and that the delay was technical. He therefore accepted the request.

44. The representative of Yugoslavia supported the request and expressed doubt as to the usefulness of calling another Committee meeting at a time of a heavy GATT programme. The question which the Committee should ask itself was whether it would benefit from having India as a member. Earlier discussions had shown that India was doing its best to fulfill its obligations under the Agreement. She supported the request.

45. The representative of Argentina stated that no substantive problems appeared to exist. Procedural problems at government level were often unforeseeable. The additional delay requested by India was short and his delegation supported it.

46. The representative of Sweden supported the request but wondered whether the Indian authorities could consider applying the substance of the Agreement before the lapse of the three months period.

47. The representative of Czechoslovakia stated that he had no objection to a further extension of three months, as requested. However, de facto application in the meantime would be most welcome.

48. The representative of India drew attention to the fact that the request was on account of a procedural delay and was due to circumstances beyond control and which could not have been foreseen. Concerning de facto application he recalled that this issue had been discussed at previous meetings which had considered the Indian request for an extension period. Without committing himself to de facto application, at this stage, he could confirm that the situation remained unchanged; India was in fact much further on the way to administratively and organizationally applying the Agreement than it had been then. He did not think that a ninety-days extension would cause trade difficulties for any trade partner.

49. The Chairman suggested that unless objections were received by 30 May 1987, the Committee would be deemed to have granted India the requested extension i.e. until 1 October 1987.¹ Should there be objections the Committee could hold an emergency meeting before 1 July 1987. The Committee so agreed.

50. The representative of India reiterated that the request had been made late because it had only recently become evident that the proposed legislation would not be able to come up before the recently concluded session of Parliament. He noted that the United States delegation had found it difficult to respond to the request. In these circumstances, the Chairman's proposal appeared to be the best solution.

51. The Chairman invited India to submit information on implementation and administration at an early date.

E. Private companies engaged in customs valuation

52. The Chairman referred to documentation on the above subject which was circulated in response to an airgram of 3 March 1987. This airgram had also been sent to observers. A communication from the United States delegation (VAL/W/43) and a communication from the observer for Indonesia (subsequently distributed as VAL/W/44) were handed out at the meeting. Documentation received from the Economic Commission for Europe had been circulated as VAL/W/41 and 42.

53. The representative of the United States in introducing document VAL/W/43, stated that it contained information in response to a Federal

¹No objections were received by the deadline.

Register notice, designed to solicit background on problems as far as US exporters perceived them; i.e. time-consuming and costly inspections, the fact that pre-shipment inspection companies had the power to rule on the acceptability of prices, and the fact that business-confidential information was being accumulated. The notice and a petition filed under section 301 of the US Trade Act against certain countries which had employed pre-shipment inspection firms had led his authorities to adopt a five-point action plan: (i) investigation by the International Trade Commission; (ii) bilateral consultations with countries employing pre-shipment inspection companies; (iii) efforts to monitor the activities of these companies; (iv) consideration of possible domestic legislation; and (v) a suitable multilateral solution. The report of the Commission was expected to be released in July 1987, and would be made available to the Committee. None of the bilateral consultations held, had yielded results. The monitoring of, and dialogue with companies had resulted in some improvements but not in respect of problems concerning customs valuation. Legislation had been introduced and was part of the comprehensive trade legislation presently before Congress. This would severely limit the activities of these companies in the United States, particularly when their activities were in conflict with agreements such as the GATT Agreement. He hoped that the Committee and the GATT in general could take some action that could lead to a multilateral solution. His delegation suggested that the Committee might prepare a report to the GATT Council for consideration of appropriate action on valuation and other aspects of pre-shipment inspection problems. The subject might be appropriately examined in the Non-tariff Measures Negotiating Group or in the Negotiating Group dealing with GATT Articles or in a separate working party. In addition, his delegation endorsed a recent suggestion made in the ECE to develop an international code of behaviour for pre-shipment inspection. In this connection, he noted that the Parties to the Agreement were committed to a non-arbitrary system of valuation, and might therefore consider the development of guidelines for their respective actions on pre-shipment inspection. Such work within the Committee could be aimed at encouraging and developing a multilateral rather than the unilateral approach which was presently being taken by Parties.

54. The representative of the European Economic Community agreed generally with the United States statement. The EEC had received complaints about various factors affecting exports and was reasonably convinced that some of the practices mentioned were not consistent with the Agreement. Equally, it was aware that some of these practices had been notified as non-tariff measures in the Uruguay Round framework. He was not sure that highly effective results could come from the Committee. There was a wider question as to whether some practices were consistent or otherwise with Article VII of the General Agreement and this should be taken up in a wider context where there were issues other than valuation involved. The topic should, however, be kept on the Committee's agenda.

55. The representative of Argentina stated that his authorities' examination of the matter would be enriched by the submissions from the United States and Indonesia. In preliminary remarks he noted that the problems were complex and that the experience of different countries were

not similar. It was also important to note that only some activities related to obligations under the Agreement and that countries using pre-shipment inspection companies were not members of the Committee (some of these countries were GATT contracting parties). He therefore wondered whether it would be meaningful to contemplate action in the Committee. Other types of action which had been mentioned did not require approval by the Committee. Any contracting party might raise a matter in the Council and any participant in the Uruguay Round might evoke problems in negotiating groups. In the circumstances, however, he suggested that all Parties which were facing problems in this area should report to the Committee so as to give a sufficiently broad picture for any further discussion in greater detail.

56. The representative of Australia agreed that a systematic approach was required and that the US submission was a useful contribution. Her authorities had begun examining the problem but on a smaller scale than that undertaken by the United States. Specific complaints by Australian exporters had been registered concerning uplifts in valuation made by a company under examination. In one case, the value of a shipment had been uplifted by approximately 6 per cent. Her authorities were concerned that the action of the company was inconsistent with Article 7:2(d) of the Agreement. In another case, the inspection company had claimed to base its valuation on what it considered to be normal export market prices. Such a practice appeared to be inconsistent with Article 7:2(a). Her authorities were prepared to contribute to the broader examination of the problem.

57. The representative of Japan, in a preliminary remark, stated that pre-shipment inspection by private companies existed in Japan but that no complaints had been received. Some Japanese circles welcomed pre-shipment inspection which reduced delay in customs clearance in some countries. On the other hand, if the company had the power to block shipment, this might have the impact of infringing on territorial jurisdiction. Therefore, this matter should in his opinion be examined from various points of view.

58. The representative of Sweden stated that there was no doubt in the mind of the Nordic delegations that some of the activities of pre-shipment inspection companies were useful and legitimate, e.g. quality and quantity inspection. However, they had noted the recent proliferation of valuation activities by private companies with some alarm. There had been cases where exporters in Nordic countries had decided to refrain from exporting to certain markets due to the control companies' excessive administrative demands which sometimes constituted clear barriers to trade. According to their understanding, a growing number of countries, presently about 25, employed the services of these companies in the valuation field. They felt that this fact merited a serious discussion with participation from all countries concerned. They shared the wish for a multilateral solution.

59. The representative of New Zealand stated that the New Zealand Export Institute had reported that no information was available on the use of private consultants in customs valuation. This seemed to reflect lack of export to the countries concerned. What concerned his authorities was the likely negative effect on the potential for trade and the possible

proliferation of the use of private consultants. On first reading, he thought that the United States document was useful and that it provided scope for further examination. However, the document distributed by the delegation of Indonesia was the first contribution from a developing country and did give an explanation as to why private consultants were used.

60. The representative of Switzerland stated that the direct link between the topic under discussion and the Agreement was not clear. Although a number of problems had been mentioned, they did not necessarily have a direct link with customs valuation. The Committee seemed to be discussing practices of private companies and not the obligations or policies of governments. In order to be able to continue discussions in the Committee, it would be necessary to start defining the problems in terms of precise provisions of the Agreement. However, it was of particular concern that the countries which apparently created problems were not Parties to the Agreement, not present in the Committee and did not participate in the discussion. He did not see how this problem could be solved. The documents submitted by the United States and Indonesia hopefully would help to determine what further work might be done in the Committee.

61. The observer for Côte d'Ivoire stated that the problem was very complex. While she understood the reticence of some countries concerning private surveillance companies, most developing countries, in order to sustain their development, had to import a larger number of products. These countries were at the mercy of certain suppliers who did not respect the clauses of the contracts entered into, knowing the limited means of control in the majority of developing countries. This could have very clear consequences on the development of several of these countries. Until such time as the developing countries were able to undertake these practices themselves, they had to have recourse to the services of such companies. She thought that the questions raised could not be settled before sufficient information was available.

62. The observer for Indonesia, in introducing his delegation's document, stated that the practice of engaging pre-shipment inspection companies had been beneficial to their authorities and considered that the activities in question were not contrary to GATT obligations. His delegation shared the view of those who thought the matter might be settled multilaterally, taking into account of the fact that twenty-five developing countries which used these companies were not Parties to the Agreement.

63. The representative of the European Economic Community welcomed the statements made by the observers. He considered that irrespective of the legitimacy of the practices, certain measures could be taken to improve the situation. The particularly unacceptable features of the system were the lack of transparency and the non-publication of guidelines by the governments concerned. Also, the monitoring companies were not required, or did not as a matter of routine, pronounce on prices as soon as clearance was requested from them, but instead sometimes waited until the shipment was imminent with considerable commercial disadvantage to the exporter. He agreed that there were good features to the activities

of the companies concerned but he did not see that this was true in some aspects of valuation. Interference in contracts freely entered into in the normal course of trade meant reversion to a system of notional prices which Parties had made great efforts to disband, in order to recognize commercial realities. The Agreement could certainly be undermined if this was in a way condoned.

64. The representative of India stated that as a member of the Committee without any direct interest in the issue, some of the questions raised deserved attention. Even if the examination of the kind presently undertaken was perhaps justified in terms of Article 18:1, the Committee was required to afford the opportunity to consult on matters relating to the administration of the customs valuation system by Parties to the Agreement only. He also wondered whether the problem of over- and under-invoicing which appeared to be the main trade problem, had been discussed in the Committee. Noting that the United States had referred to the problem as being connected to inexperienced customs services unable to detect fraud in import documents, he wondered how developed countries dealt with this problem. He also asked whether the Customs Co-operation Council had ever been asked to look into the problem of over- and under-invoicing and, if so, what these deliberations had been. He did not have the problem of related transactions in mind because the problem of over/under-invoicing was a major problem in itself and the question arose on how it related to this Committee's work. The matter under discussion did not necessarily relate to a fraudulent invoice being presented but rather, might involve authentic documents combined with direct complicity or collusion between the exporter and the importer in an attempt to defraud the government for certain other purposes. Again, developed country Parties might share experiences with the Committee, indicating in particular whether a methodology of tackling the problem had been developed. As to the idea of a multilateral dialogue, the question remained whether it had necessarily to be carried out in this Committee, but on this he had an open mind.

65. The representative of the United States recognized that there were limits to the discussion of this item in the Committee, but emphasized that as the Committee had already discussed the matter and had before it certain background material, fruitful multilateral discussions might be held. The Committee might wish to consider making information available to another GATT body, if it were decided that another body were to take up the matter. He noted that the Indonesian submission had stated that it was necessary to look behind the price paid by the importer to the exporter in any particular transaction, to make certain for example that the price was not artificially low as a result of collusion. Under the Agreement, however, the Parties did not have the right to do this, even though they had the most legitimate objectives. Although Article 17 quite clearly gave Parties the scope to tackle the problem of related-party transactions and any other problem, including customs fraud, the Agreement shifted the burden of proof, i.e. the price should be accepted as being a legitimate price unless there was reason to question it. The view seemed to exist, nevertheless, that the price should be considered suspect rather than being questioned on the basis of concrete aspects of the transaction. This, he thought, was the real problem.

66. The observer from the Customs Co-operation Council informed the Committee about the work carried out by his organization in relation to valuation fraud. A Joint Expert Group had held its first meeting on 19-21 January 1987 and identified a number of sectors deserving consideration, in particular the identification of cases of fraud, the need for an appropriate administrative organization to implement legislation, and the need for developing countries to have detailed valuation legislation, and mutual administrative assistance. He said that in view of the obstacles encountered in the implementation of the Nairobi Convention, it had been found useful to prepare a draft recommendation specifically addressing the question of valuation fraud. He invited interested countries to participate in the second meeting of the Joint Expert Group scheduled for end-September beginning-October.

67. The Chairman suggested that, as documents had only recently been received and additional oral information had been given at this meeting, further reflection might be needed.

68. The Committee took note of the statements made and agreed to keep the matter on the agenda.

F. Technical assistance

69. The Chairman noted that the secretariat had circulated the latest paper prepared by the Customs Co-operation Council Secretariat summarizing current technical assistance activities (VAL/W/29/Rev.2).

70. The representative of Argentina informed the Committee that a useful seminar had been held in his country in order to train customs staff in matters of customs valuation and specifically on the Agreement. Such courses were considered to be one of the requirements for implementing the Agreement.

G. Other business

(i) Special meeting on Customs Valuation held in the CCC

71. The observer from the Customs Co-operation Council gave a report on the special meeting which had been held on 11-13 March 1987 with the purpose of giving non-Parties an opportunity to examine problems faced in connection with the possible adoption of the Agreement. Nineteen countries and three international organizations had participated in this meeting, which had been convened in the framework of the Seoul Declaration, by which all CCC member States had been invited to intensify their efforts with a view to acceding to the GATT Agreement. Participants had addressed problems relating to (i) technical obstacles; (ii) economic and budgetary obstacles; (iii) administrative obstacles; and (iv) fraud.

72. Concerning technical obstacles the participants had identified, in particular, the following matters: (i) importation by exclusive agents; (ii) scope and interpretation of Article 7, bearing in mind the possibility of applying methods other than those described in Articles 1 to 6;

(iii) scope and implications of Articles 11 and 13, which provided nothing in regard to possible fines levied on the importer; and (iv) application of Article 17 and paragraph 7 of the Protocol, in particular the determination of the burden of proof if the transaction value was refused. Participants had agreed that further studies on these points could be undertaken by the CCC Secretariat and the Technical Committee, with a view to adopting appropriate instruments. The Group had considered the economic and budgetary repercussions of the application of the Agreement, bearing in mind the importance of customs services as income for the countries concerned. The attention of the Group was drawn to the study of economic considerations drawn up by the Secretariat and published as document 33.574. The Group had noted that the study based exclusively on data supplied by industrialized countries could be supplemented by information from developing countries. As regards administrative obstacles, the participants had recognized the utility of the Council's seminars and had suggested that they include the study of legislation adopted by certain countries. They had felt that these seminars or courses should also cover the modalities of customs control. The Group had agreed that certain countries might need assistance in drafting laws and regulations and in setting up specialized administrations in the valuation field. With respect to fraud and false invoicing stress had been laid on mutual administrative co-operation. The participants had been invited to take part in the work of the Joint Expert Group. Many participants had stated that the solution to their concerns were to be found either in amending the Agreement or in enlarging the scope of its Protocol. In this connection, participants had been informed of the fact that the MTN's under the Uruguay Round offered the possibility of reconsidering the Agreements deriving from the Tokyo Round and that negotiators were free to table proposals to this effect. The full report of the meeting was contained in CCC document 33.945, which would be submitted to the June 1987 Council and in October 1987 to the Technical Committee for consideration and follow-up.

73. The Committee took note of the statement.

(ii) Panel candidates

74. The Chairman recalled that in accordance with paragraph 2 of Annex III to the Agreement, Parties had been expected at the beginning of 1987 to nominate persons available for panel service in 1987 or to confirm existing nominations. Nominations for 1987 had been received from the EEC (at the meeting), Hong Kong, Japan (at the meeting), the Republic of Korea, Sweden and the United States. He reiterated the invitation to Parties wishing to confirm or modify previous nominations and Parties not having made nominations to communicate the relevant information, through the secretariat, as soon as possible.

(iii) Derestriction of documents

75. The Chairman stated that the documents enumerated in VAL/W/40 had become derestricted.

(iv) Dates of the next meetings; draft agenda of next meeting

76. The Committee reconfirmed 9-10 November 1987 as dates for the next meeting and agreed on 3 May 1988 as a tentative date for its subsequent meeting. The following draft agenda was agreed for the next meeting:

- (i) accession of further countries to the Agreement;
- (ii) report on the work of the Technical Committee;
- (iii) information on implementation and administration;
- (iv) private companies engaged in customs valuation;
- (v) technical assistance;
- (vi) seventh annual review of the implementation and operation of the Agreement and the 1987 report to the CONTRACTING PARTIES.

77. The secretariat was requested to prepare a background note for the review and a draft report to the CONTRACTING PARTIES.