

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

VAL/M/26

13 November 1990

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### Committee on Customs Valuation

#### MINUTES OF THE MEETING OF 20 MARCH 1990

Chairman: Mr. H. Krueger (Germany)

1. The Committee on Customs Valuation met on 20 March 1990.
2. The following agenda was adopted:

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#### A. Election of officers

3. The Committee elected Mr. H. Krueger (Germany) Chairman, and Ms. S. Riordon (Canada), Vice-Chairwoman for 1990.

#### B. Report on the work of the Technical Committee

4. The Chairman of the Technical Committee on Customs Valuation gave an oral report on the nineteenth Session of the Technical Committee on Customs Valuation, held in Brussels from 12-16 March 1990, the full report of which is contained in CCC Doc. 35.970.

5. In connection with intersessional developments, the Chairman said that the Technical Committee had been informed that the Technical Attaché in the Valuation Directorate had visited the customs administrations of Belgium, France and the United Kingdom to collect information on the experience they had acquired in the area of valuation control. Following these visits, it had been agreed to prepare a handbook in loose-leaf form, divided into five parts. For that purpose, two meetings of the working party would be convened, from 3-5 October 1990 and from 21-23 January 1991, subject to the Council's approval, to review and finalize the handbook on the basis of a draft prepared by the secretariat. The chairman of the working party would report to the Technical Committee on the progress in the work before submitting the handbook to the session of the Council in June 1991.

6. The Technical Committee had also been informed that the Valuation Directorate had proposed to convene a conference in Brussels from 19-21 March 1991 to take stock of the experience acquired by Parties after ten years of application of the Agreement, and draw up a plan of action for the coming years with a view to broadening the application of the Agreement.

7. The Technical Committee had also been informed that, under the Council Fellowship Programme, the Valuation Directorate had received in Brussels, from 25 September to 15 December 1989, two officials, one from Pakistan and one from Uganda, and that the secretariat had made certain changes to the Fellowship Programme.

8. In the area of technical assistance, the Technical Committee had considered the information document (Doc. 35.877) describing the seminars and training courses organized on the Agreement and other relevant activities of the Customs Co-operation Council. The Director had informed the Committee that the United Nations Conference on Trade and Development (UNCTAD) had organized a Seminar on Customs Valuation from 4-11 November 1989 in Jakarta, Indonesia, with the support and co-operation of the Government of Indonesia. The seminar had been attended by senior and mid-management-level officials of the customs administrations of ASEAN countries. In co-operation with the Customs Administration of Pakistan, the Council had organized two seminars on the GATT Agreement on Customs Valuation, from 21-23 and from 26-28 November 1989, in Karachi and Islamabad respectively. They had been attended by over thirty customs officials and senior executives representing trade and industry. An official of the Australian Customs Administration, who had been invited by the Council, had given presentations on his administration's experience in the administration of the Agreement.

9. Continuing his report, the Chairman said that the Technical Committee had adopted a document on the procedures for the consideration of a matter submitted to the Technical Committee, in which the stages to be followed for the preparation of the instruments were described.

10. The Technical Committee had also approved a case study on the application of Article 8.1(b) concerning the adjustments that should be made in connection with the services referred to in points (i), (ii), (iii) and (iv) of the Article.

11. In addition to aforementioned technical matters, the Technical Committee had examined the following questions:

- Meaning of the words "activities undertaken by the buyer on his own account after purchase of goods but before importation". The Committee had pursued its consideration of a draft Commentary on the question of "activities undertaken by the buyer on his own account after purchase of goods but before importation". Since agreement could not be reached on certain aspects of the question, the Secretariat had been requested to redraft the Commentary.
- Buying commissions. The draft Commentary submitted for consideration to the Technical Committee had examined the rôle and activities of a buying agent and the extent to which the commission charged by an agent could be considered a buying commission. The Committee had decided to resume the consideration of this matter at its next session since agreement still could not be reached on some aspects of the problem.
- Insurance premiums for guarantee. The Technical Committee had pursued its discussion on the treatment applicable to the valuation of insurance premiums for warranty in accordance with Article 1 of the Agreement. After hearing various general opinions, in particular as to whether or not it was possible to abide by the facts described in the document, it had instructed the secretariat to revise the draft case study for the next session.
- Confirming commissions. The Committee had noted that the matter of the valuation treatment of confirming commissions had already been considered during its fifth to eighth Sessions. The Committee had heard opinions reflecting interest in studying the matter, and had requested the secretariat to prepare a document with a view to the adoption of an instrument.
- Royalties, licence fees and the meaning of the words "right to reproduce the imported goods". The Technical Committee had held a general discussion of an information document on this subject prepared on the basis of a study by the Administration of Canada, and had decided that the various issues discussed therein deserved to be dealt with in more than one document. It had therefore decided to include in the agenda for its next session two documents under this item. They would study the implication of the terms "royalties and licence fees related to the goods being valued" and "payment of royalties and licence fees as a condition of the sale of the goods" under Article 8.1(c), and the scope of the phrase "right to reproduce" in the light of the contents of the Note to Article 8.1(c).

12. The next meeting of the Technical Committee had been scheduled for 8-12 October 1990.

13. The Committee took note of the report on the work of the Technical Committee and expressed appreciation of the continued valuable work of that body.

C. Information on the implementation and administration of the Agreement

(i) Cyprus

14. The representative of the United States asked the delegation of Cyprus to submit a copy of the regulations referred to in paragraph 2(4) of the amendments to the Customs and Excise Law (VAL/1/Add.26).

(ii) Australia

15. The representative of Japan said that, according to Section 161 H (4) to (7) of the Customs and Excise Legislation Amendment Act of 1989 (VAL/1/Add.14/Suppl.3), the Australian customs authorities could, in certain specific cases, shift the burden of proof for the truth or accuracy of the declared transaction value of the imported goods from the customs authorities to the importer (i.e. the owner) of the goods. Furthermore, unless the importer gave a satisfactory explanation to the customs authorities within a given period of time, the customs authorities could decide that the customs value of the goods would not be determined on the basis of the transaction value. In this connection, he asked the following questions: What kind of explanation or proof was required in the provision of the Act which stated that "the owner of the goods to whom the notice was given has satisfied the collector as required by the notice"? What document, other than the invoice or the written contract, might be provided to satisfy the customs authorities in the process of the declaration? The representative of Australia explained that the burden of proof was not necessarily shifted to the importer in the circumstances provided in the sub-section 161 H (4) to (7). The implementing legislation of Australia did not contain any specific reference to Article 1(b) of the Agreement, which had the effect of requiring that, to be acceptable as transaction value, a price should not be subject to a condition or consideration for which a value cannot be determined. His country's legislation had, therefore, been amended by Section 161 H (4) to (7) to enable customs, in certain specific cases, to disagree with an importer over the customs value resulting from the particular facts of a transaction. While Section 161 H (4) did not contain specific provisions to counter package deal and price averaging, those were the expected circumstances for which these provisions would apply. Under the circumstances where customs considered that a package deal or price averaging operation may be occurring, customs may form the opinion that the declared price was not acceptable, on the basis of the evidence available to it under the particular transaction. Having formed the opinion that the facts may not necessarily provide the correct value in the specific case,

customs would invite the importer to present information which might explain whether the price entered had or had not been declared in order to avoid or reduce customs duty. The importer would have the opportunity to explain why the particular transaction value had occurred. Depending upon the replies received from the importer, customs might still disagree with the assessment by the importer. Customs could take account of various documents that the importer could present to verify that the price was a valid price under the particular circumstances of the transaction. Such relevant documents leading up to the contract of sale would include telexes, letters, minutes of meetings, where the object of the particular price in a contract of sale would be spelled out. Similarly, the importer might be able to demonstrate that, in the context of the customs consideration of price averaging or package deals, there had been other importations of the particular items which showed that the individual prices in the contract invoice were legitimate prices and were genuinely available in the ordinary course of trade. If, however, customs was unconvinced by the documentation provided by the importer, then Section 161 H (4) allowed customs to reject the transaction value and determine the value by one of the alternative methods as provided by the Agreement. In rejecting a transaction value, customs would take into account the evidence available to it which warranted such rejection. An arbitrary rejection of a transaction value would not be warranted because of recourse importers have to Courts of Appeal. In Australia, ninety-nine per cent of importations occurred under the transaction value and only five per cent were subjected to any form of checking at the time of importation. If customs chose to use Section 161 H (4) after importation, and requested extra duty by rejecting the transaction value and by requiring a substitute transaction value, the importer would be in a position to refuse to pay the extra duty and to require customs to recover the outstanding duty paid. In that circumstance, the onus would be on customs to prove its action in a court of law.

16. The representative of Japan said that the contents of the Section 161 H seemed to be somewhat different from the previous amendments of the corresponding section of the Customs Law (VAL/1/Add.14/Suppl.2, page 7). He asked the Australian delegation to submit the new text (circulated subsequently in document VAL/1/Add.14/Suppl.4) and suggested that the Committee revert to this matter at its next meeting. The representative of Australia said that, since the introduction of the legislation in July 1989, the provisions of Section 161 H(4) had not been used.

17. The representative of the United States said that her authorities continued to believe that the legislation of Australia contained provisions that were not consistent with the Agreement. Her authorities were considering the forum in which this matter should be pursued. They were currently soliciting comments from the exporters to Australia in order to ascertain the impact of Australia's legislation on the commercial interests of her country.

(iii) Republic of Korea

18. The representative of Australia said that Article 9.3:1(4) of the Revised Customs Law (VAL/1/Add.19/Suppl.3) did not include the provision of Article 8.1(c) of the Agreement which stated: "to the extent that such royalties and fees are not included in the price actually paid or payable". He asked whether the Korean authorities intended to include royalties and fees in the calculation of customs value?

19. The representative of the Republic of Korea stated that the Commissioner had instructed the customs houses that royalties and fees should be added to the dutiable value in the cases where such payments were related to the goods being valued as a condition of sale, and therefore, where such royalties or fees were not included in the price.

20. In response to another question by the representative of Australia, the representative of the Republic of Korea said that "members of the same family" listed as a category of related Parties in Article 15.4(h) of the Agreement was incorporated in item(8) of Article 3.3 of the Revised Presidential Decree for Customs Law (VAL/1/Add.19/Suppl.3, page 6) which in turn, referred to the coverage of the relationship between the buyer and the seller in the Presidential Decree for Basic Law for National Tax.

21. In response to two other questions by the representative of Australia, the representative of the Republic of Korea said that sub-paragraphs (2) and (3) of Article 9-6:1 and sub-paragraphs (1) and (3) of Article 9-7 of the Customs Law had not been amended and, therefore, were not included in the Revised Customs Law (VAL/1/Add.19/Suppl.3).

(iv) Austria

22. The Committee took note of certain amendments to the valuation provisions of the Customs Valuation Act of Austria (VAL/1/Add.10/Suppl.1).

23. The Committee took note of the statements made under this item and agreed to revert to the legislation of Australia, Cyprus and the Republic of Korea at its next meeting.

D. Other Business:

(i) Linguistic Consistency

24. The Chairman drew attention to the proposed rectification of the French text of paragraph 1 of both the Note to Article 2 and the Note to Article 3 which suggested to replace "la vente" in the first sentence by "celui" and to change the second sentence to read "En l'absence d'une telle vente ..... différente".

25. After a brief discussion, the Chairman suggested that this new proposal would be circulated to Parties for comments (VAL/W/49/Add.4). If there were no objections to the proposed rectification within thirty days of its circulation, the French text of the Agreement would be changed as suggested in document VAL/W/49/Add.4. It was so agreed.

E. Date and draft agenda of the next meeting

26. The Chairman suggested to fix the date and agenda of the next meeting in consultation with interested delegations. It was so agreed.