

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

VAL/M/28

5 February 1992

Special Distribution

Committee on Customs Valuation

MINUTES OF THE MEETING OF 13 NOVEMBER 1991

Chairman: Mr. de la Peña (Mexico)

1. The Committee on Customs Valuation met on 13 November 1991.

2. The following agenda was adopted:

	<u>Page</u>
A. Report on the work of the Technical Committee	1
B. Information on implementation and administration of the Agreement:	6
(i) Zimbabwe	6
(ii) Malawi	6
(iii) India	6
(iv) Cyprus	9
(v) Australia	9
(vi) Argentina	9
C. Technical assistance	10
D. Eleventh annual review of the implementation and operation of the Agreement; Report (1991) to the CONTRACTING PARTIES	10
E. Other business:	10
(i) Status of application of the Committee decisions on interest charges and computer software	10
(ii) Linguistic consistency	10
(iii) Panel candidates for 1992	11
(iv) Date and draft agenda of the next meeting	11

A. Report on the work of the Technical Committee

3. The observer from the Customs Co-operation Council (CCC), presented a report on the twenty-second session of the Technical Committee on Customs Valuation held from 7 to 11 October 1991, on behalf of the Chairman of that body, Mr. T. Lobred. The report of the session had been circulated in CCC document 37.020. The session had been attended by most signatories to the Agreement and by observers from twenty countries and one international organization.

4. In connection with intersessional developments, the Technical Committee had heard a report from the GATT secretariat covering the latest developments of the Uruguay Round and the status of the decision and recommendations concerning valuation. In commenting on the Uruguay Round, several observers had noted the importance which their administrations placed on the eventual adoption of the decision and recommendations concerning the GATT Valuation Agreement. For many, the adoption of these measures could remove the last obstacle to joining the GATT Agreement.

5. The Technical Committee had also been informed that the CCC, at its seventy-seventh/seventy-eighth sessions held in June had elected Mr. J.M. Siegrist (Canada) for a five-year term as Director of Valuation. The Council had also approved the Reports of the Technical Committee including the following instruments:

- commentary on buying commissions;
- case study on insurance premiums for warranty;
- commentary on activities undertaken by the buyer on his own account after purchase of the goods but before importation.

6. The Technical Committee had also been informed that an International Conference on Customs Valuation had been held at Council Headquarters in Brussels in March, which was chaired by Mr. John B. O'Loughlin, a senior executive with the US Customs Service and a former Director of Valuation at the CCC. The presentations made over the three days of the meeting ranged in topic from the development, implementation and future prospects of the Agreement to the rights and obligations of Customs officers and importers, commercial fraud and the experiences of developing countries with the Agreement. It was felt that all the participants had come away with a better understanding of the Agreement as well as a better appreciation of the needs and concerns of contracting and non-contracting parties alike. A booklet containing the texts of all the presentations had been published by the Secretariat and was available in the publications division of the CCC.

7. With respect to the Customs Valuation Control Handbook, the Technical Committee had been informed that the final work had been completed and that it had been approved for publication by the Council. This Handbook would be a very valuable working tool for Customs officers in the field, in assisting valuation appraisal work. Although written for countries which apply the GATT Agreement, the Handbook would also be useful to countries applying other valuation systems.

8. In the area of technical assistance, the Technical Committee had taken note of information document 37.038 which contained updated information on seminars and training courses organized on the GATT Agreement and the activities of the CCC in this area. The Technical Committee had been informed of a seminar held in May which had been

organized by the Council in collaboration with the Tunisian Administration for forty officials from five countries of the Mahgreb Arab Union (Tunisia, Algeria, Morocco, Libya and Mauritania). The GATT secretariat and the French Customs Administration had participated with a CCC official in this seminar. The seminar was found to have been very useful in explaining the principles of the Agreement.

9. In August, the CCC had participated in the Eighth Seminar on Customs Valuation which had been jointly organized by the Mexican Administration and the Organization of American States. Fifty-three officials from sixteen Latin American countries had attended the seminar.

10. In October, a Valuation Directorate official had made a presentation to the meeting of the Directors-General of Customs of Latin America in Viña del Mar, Chile. Representatives of twenty-four countries and nine international organizations had attended this meeting. While there was considerable interest in the GATT Valuation Agreement in this region, to date there have been very few signatories. A technical mission had also been carried out in Ecuador to assist in reviewing that country's new valuation legislation which was based on the principles of the Code.

11. Also, in October, a Directorate official had conducted a valuation training course in Tokyo for officials from countries of the Asian region. This programme was part of a comprehensive training programme organized and funded by the Japanese Customs Administration for countries in its region.

12. Future plans included a regional seminar in Egypt in January 1992 and training courses in Turkey and Argentina in May/June 1992.

13. With respect to technical issues currently being considered, the observer from the CCC stated that the Technical Committee's programme of work included the following topics:

- Confirming commissions. The Technical Committee had continued to examine a draft Explanatory Note on the valuation treatment of confirming commissions. The Committee had nearly concluded its examination of this topic and a revised draft would be prepared for the Technical Committee's next session.
- Definition of royalties and licence fees. The Technical Committee had examined a draft Commentary which gave, for the purposes of customs valuation under the GATT Valuation Agreement, a suggested definition of royalties and licence fees. This was a significant study since its conclusion would be the basis for identifying royalty and licence fee payments in contracts of sale. A revised document would be prepared for the next session to reflect the discussion at the Technical Committee's last meeting.

- Practical examples to illustrate the application of Article 8.1 (c). To further clarify the application of the royalty and licence fee provision in the Agreement, the Technical Committee had requested members to submit practical examples which would illustrate problem areas and which would supplement the examples to be found in Advisory Opinions 4.1 to 4.6 of the Valuation Compendium. The Technical Committee had conducted an initial review at its last meeting and had instructed the Secretariat to revise the examples, taking account of additional facts which would clarify the specific circumstances to be considered. The Technical Committee had decided to take up the question again at its next session.
- Scope of the expression "right to reproduce the imported goods" within the meaning of the Interpretative Note to Article 8.1 (c). The Technical Committee had examined a draft Commentary which was intended to provide interpretative guidelines on the practical application of the provisions contained in the Interpretative Notes with respect to this subject. The Technical Committee had decided to re-examine the latest revision at its next meeting.
- The meaning of the term "on his own account" in the Note to Article 1. A question concerning the meaning of this term had been raised by a contracting party during a previous session. At its last session, the Technical Committee had examined the matter on the basis of an information document prepared by the Secretariat. The Technical Committee had concluded, in concurrence with the party raising this matter, that an instrument was not necessary. The Committee's report which reflected the discussion of the matter, would serve as a record for administrations needing guidance on this topic.
- Correlation between the Note to Article 1 and paragraph 8 of the Protocol. This issue had arisen as a result of an interpretation by some parties that paragraph 8 of the Protocol enlarged the scope of the provisions of Article 1 by including in the price actually paid or payable, all payments made as a condition of sale by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller without first establishing whether the payment was "for the imported goods". Questions had been raised in this respect as to the intention of the Protocol Article. After considerable discussion, the Technical Committee had decided to request the submission of examples where this issue arose in order that the question could be reviewed on the basis of specific cases.
- Determination of the value and apportionment of an assist under Article 8.1 (b). This question had been raised by a party which was concerned that the Agreement (more specifically, the Interpretative Notes) did not seem to allow any flexibility in

apportioning the value of the assists covered by this sub-paragraph except in very specific circumstances. For example, when a mould had had prior use, the Interpretative Notes provided for a downward adjustment of its value to reflect that prior use. However, if a new mould had been supplied by the buyer to the seller and only a portion of its full value had been used in the production of the imported goods, leaving an unused portion for future production or use, the Agreement remained silent on whether the residual value could be taken into account in the apportionment exercise. The Committee had agreed that this was the case from a strict reading of the Agreement, but had pointed to several passages of the Interpretative Notes which endorsed and encouraged a flexible and reasonable approach to the way in which the apportionment of the value of an assist could be made. These seemed to allow the latitude necessary to administer this provision of the Agreement. The Committee had concluded that it did not appear necessary to prepare an instrument on this subject.

- Relationship between Articles 8.1 (b) (ii) and 8.1 (b) (iv).
The Agreement provided in Article 8.1 (b) (iv) that design work undertaken in the country of importation was not to be added to the price actually paid or payable. The question which arose was whether this provision would have any effect if domestically produced assists of the type covered by Article 8.1 (b) (ii) had incorporated in them, as an element of their cost, either of acquisition or of production, domestic design work, engineering, etc. The Secretariat had analyzed the question and concluded that since the Agreement required the value of the category of assists covered by Article 8.1 (b) (ii) to be determined on the basis of the cost of acquisition or of production and that, in accordance with generally accepted accounting principles, the cost of any design work would be included in that value, then there was no exemption possible for design work, engineering, etc., when determining the value of an assist under Article 8.1 (b) (ii). The Committee had requested the Secretariat to draft a Commentary reflecting this view for examination at the Technical Committee's next session.

14. Continuing his report, the observer from the CCC said that the following new technical questions had been considered by the Committee:

- Consideration of forms of payment for royalties and licence fees. The discussion on the definition of royalties and licence fees had led the Committee to feel that the examination of the form and method of payments in a contract of sale might assist an administration in identifying whether a payment was, in fact, a royalty or a licence fee. The Committee had requested the Secretariat to prepare an information document on this topic for the next session.

- Correlation between paragraphs (c) and (d) of Article 8.1. At the request of a party, the Committee had agreed to examine circumstances where paragraph (d) of Article 8.1 would come into effect, particularly in respect of payments that might initially have been considered under paragraph (c). The Committee had requested the Secretariat to prepare an information document on this question.

15. The Technical Committee's twenty-third session would take place from 16 to 20 March 1992.

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

B. Information on implementation and administration of the Agreement

(i) Zimbabwe

17. The Chairman recalled that at its last meeting (VAL/M/27), the Committee had agreed to a request by Zimbabwe (VAL/42) to delay the application of Article 1.2 (b) (iii) and Article 6 of the Agreement for a further period of two years, beginning 1 January 1991. It had also agreed that during the period of extension of delay, periodic progress reports on the steps taken to implement those Articles would be submitted by Zimbabwe, with the first one to be provided to the Committee by 31 December 1991 at the latest. In accordance with this decision, Zimbabwe had submitted its initial progress report which was contained in document VAL/42/Add.1.

18. The representative of the United States expressed his government's appreciation for Zimbabwe's timely submission of its report, and for the opportunity that Zimbabwe had given Committee members to examine its draft legislation in advance. He stated that such a step was unprecedented and indicative of the sincerity and seriousness with which Zimbabwe took the implementation of the Code.

19. The representative of Zimbabwe took note of the comments made and requested any other delegation having comments to submit them as soon as possible.

(ii) Malawi

20. The Committee agreed to revert to the legislation of Malawi at its next meeting.

(iii) India

21. The Chairman recalled that at its last meeting, the Committee had been informed that Rule 10 of the Customs Valuation Rules, 1988 of India had been amended as of 31 October 1990. At that meeting several questions had been raised regarding this amendment, and India had been invited to give its replies in writing.

22. The representative of India stated that at the last Committee meeting reference had been made to a notification issued by the Government of India on 3 August 1990, by which it was made mandatory for the importer or his agent to furnish the invoice of the manufacturer or producer of the imported goods in cases where the goods were imported from or through a person other than the manufacturer or producer. At that meeting clarifications had been sought on a number of points. Written questions submitted by two delegations and the concerns voiced at that meeting were communicated to the Ministries of Finance and Commerce of the Government of India. A detailed examination of those questions was undertaken, and the notification dated 3 August 1990 was subsequently amended. Notification of the new amendment was issued by the Ministry of Finance under Number 67/91-Customs (NT) dated 1 October 1991. It was thus no longer mandatory for the manufacturer's invoice to be produced when the goods were imported through an intermediary. He hoped that this amendment addressed fully the concerns expressed at the last Committee meeting.

23. The representative of the United States stated that the new amendment still left many of the questions raised by his delegation at the last meeting unanswered. It appeared that a manufacturer's invoice was not required in all cases where the exporter in question was not the manufacturer. But, did that mean that a manufacturer's invoice would be required in all cases where the exporter concerned was not the manufacturer and where the customs officer had some reason to doubt the truth or accuracy of the declaration? If this was the case then what would be the consequence to the importer if he was unable to provide the document? It was important to note that this document was often inaccessible to the importer. If the exporter was buying on a bone fide basis from a manufacturer, and selling in turn to a buyer in another country, it would be difficult from the standpoint of business practice for the exporter to reveal to the importer the price at which he had been able to obtain the goods from the manufacturer. Such a move would put the exporter at a competitive disadvantage, and could in fact encourage the importer to buy directly from the manufacturer. In this connection, it was also important to know whether the importer had the option of providing alternative forms of information to substantiate the declared value? His delegation found it disturbing to see legislation of this kind which suggested that a document which may or may not be available to the importer became the key to the acceptance or the rejection of the Transaction Value.

24. The representative of the European Communities shared the views expressed by the representative of the United States, and noted that the concerns voiced by his delegation at the previous meeting had also not been eliminated by the new notification. While it appeared no longer mandatory for the importer to produce the manufacturer's invoice, his delegation continued to be concerned by the power given to local customs administrations to request this documentation. In addition to the fact that for factual and legal reasons it was often not possible for the importer to submit such information, this situation created an element of insecurity for trade.

25. The representative of India said that Article 17 of the Code authorized local customs officers to ask for any document or any information that they felt was necessary to substantiate the veracity of a declared value. Rule 10 of the Customs Valuation Rules, 1988 of India that existed prior to the notification of 3 August 1990 provided that "the importer or his agent shall furnish: (b) any other statement, information or document as considered necessary by the proper officer for determination of the value of imported goods under these rules". It was important to note that the sentence "any other statement, information or document" was comprehensive and authorized the proper officer to ask for any document including the manufacturer's invoice in cases where the imported goods were imported from or through a person other than the manufacturer. The notification of 3 August 1990 had consequently not given a right to customs authorities which did not already exist under the Code and the Customs Valuation Rules, 1983 of India. However, in light of the questions and the concerns raised at the last Committee meeting his authorities had decided to amend this notification. The new amendment notified on 1 October 1991 provided that "the importer or his agent shall furnish: (b) any other statement, information or document, including the invoice of the manufacturer or producer of the imported goods in cases where the goods are imported from or through a person other than the manufacturer or producer as considered necessary by the proper officer for the determination of the value of imported goods under these rules". The new amendment retained essentially the same language as that which had existed before the notification of 3 August 1990. The submission of the manufacturer's invoice was thus no longer obligatory and could only be requested in those cases where the customs officer had a reasonable doubt or suspicion as to the accuracy or the validity of the declared value. However, in the event that the importer was not able to provide this information, he had the possibility of providing alternative forms of information to substantiate the claim that the declared value was the correct value. The representative of India stressed the fact that the notification of 1 October 1991 had only been issued to take account of the concerns that had been expressed in the Committee regarding the notification of 3 August 1990.

26. The representative of the United States said that while his delegation could understand that customs officers needed the flexibility to ask for documentation and to seek information to prove whether a declaration was accurate and truthful, he had grave doubts as to the relevance of this particular document. The fact that special reference had been made to such a document also caused him serious concern. He failed to see how the fact that the declaration of an exporter or of an importer should show a value that was different from a manufacturer's price when the manufacturer was not the exporter was relevant to the determination of the value of the goods. Although, it could be of some interest in trying to prove fraud, there were more appropriate ways of doing so. In this connection, he referred to the decision elaborated in the context of the Uruguay Round of Trade Negotiations which he felt had addressed the problems and concerns of developing countries regarding customs fraud. He concluded by saying that he wished to revert to this matter at the next meeting of the Committee.

27. The representative of India stated that the possibility had to be given to the customs officer on the spot to determine whether a particular type of document was necessary or not. The decision he took would depend on the circumstances and could vary from case to case. Specific reference to a document did not give it any particular importance, it only gave the customs official the necessary flexibility to request the document; this had been the objective of the notification.

28. The representative of Sweden stated that the recent amendment notified by the Government of India had not dispelled the concerns raised by the various delegations at the last Committee meeting, and that he would like to revert to this question at the forthcoming meeting.

29. The Committee took note of the statements made and agreed to revert to this agenda item at the next meeting.

(iv) Cyprus

30. The Committee agreed to revert to the legislation of Cyprus at its next meeting.

(v) Australia

31. The representative of the United States stated that concerns expressed in the past with respect to Australia's implementing legislation remained.

32. The representative of the European Communities stated that concerns voiced on previous occasions regarding this legislation had not been dispelled. However, his authorities were waiting to see the practical evolution of Australia's valuation system, and in the event of any problems surfacing reserved the right to return to this agenda item.

33. The representative of Sweden noted that his authorities shared the concerns voiced by a number of other delegations in the past on this legislation, for example on the issue of the treatment of royalties and buying commissions. However, further practical experience of the Australian valuation system was necessary to see whether such concerns were justified. Consequently his delegation would not insist that this matter be kept on the agenda, but that the Committee revert to it in the light of further practical experience.

34. The Committee agreed to withdraw this item from the agenda of future meetings, and revert to it if so requested by a party.

(vi) Argentina

35. The representative of Argentina informed the Committee that Argentina had submitted in accordance with Article 25.2 of the Code copies of laws, decrees and resolutions which have been adopted by the Government of Argentina. These texts will be circulated to other Committee members for their consideration in the near future.

36. The Committee took note of the statement made.

37. The Committee agreed to revert to the implementing legislations of Argentina, Cyprus, India and Malawi at its next meeting.

C. Technical assistance

38. The representative of Finland informed the Committee that the special training course organized every year by the Customs Administration of Finland for customs officers from developing countries would now be organized every other year. Certain aspects of customs administration for example customs control, customs collaboration or customs valuation would be dealt with during these courses.

39. The Committee took note of the most recent information concerning technical assistance which was contained in document VAL/W/29/Rev.6, and of the statement made.

D. Eleventh annual review of the implementation and operation of the Agreement; Report (1991) to the CONTRACTING PARTIES

40. The Committee conducted its annual review of the implementation and operation of the Agreement on the basis of a secretariat background note VAL/W/52. The Committee agreed that the secretariat issue a revised document in the VAL/- series to take account of the comments made during that review, and the work of the Committee at the present meeting.

41. The Committee adopted its annual report to the CONTRACTING PARTIES (L/6941).

E. Other business

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

42. The Chairman recalled that at the Committee meeting of 3 May 1988 (VAL/M/22), the Committee had agreed that the document VAL/W/34/Rev.4 containing information on the status of application of the two Committee decisions would be updated by the secretariat as necessary. He drew the Committee's attention to the revised version of the document circulated as VAL/W/34/Rev.5.

- (ii) Linguistic consistency

43. The Chairman recalled that at the last Committee meeting of 7 February 1991, Committee members had agreed to reflect on the question of linguistic consistency between the English, French and Spanish texts of the introductory sub-paragraph of Article 8.1 (b) of the Agreement and submit their comments in writing before the Committee met again. However, no comments had been received by the secretariat.

44. The representative of Australia informed the Committee that his delegation planned to submit written comments which would reflect the interventions that Australia had previously made on this subject.

45. The Committee took note of the statement made and agreed to revert to this matter at the next meeting of the Committee.

(iii) Panel candidates for 1992

46. The Chairman recalled that in accordance with paragraph 2 of Annex III of the Agreement, Parties would be expected to nominate persons available for panel service in 1992 or confirm existing nominations. He urged all Parties to communicate the relevant information to the secretariat as soon as possible.

(iv) Date and draft agenda of the next meeting

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