

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/W/18
29 April 1983

Special Distribution

Committee on Customs Valuation

TIME STANDARD FOR TEST VALUES UNDER ARTICLE 1.2(b) OF THE AGREEMENT

Note by the Secretariat

1. At its last meeting, the Committee agreed to take up the question of the time standard for test values under Article 1.2(b) of the Agreement at its November 1983 meeting (VAL/M/6, paragraph 41). To facilitate consideration of how this matter might be taken up at that meeting, the present note outlines the discussions that have taken place on this matter in the Technical Committee on Customs Valuation.
2. At its third session, held in March 1982, the Technical Committee considered the question of the time standard for test values under Article 1.2(b) of the Agreement on the basis of a note prepared by the Secretariat of the Customs Co-operation Council (CCC document 28.042) and a number of written comments received from delegations (Canada, document 28.227; Australia, document 28.264; United States, document 28.325; and European Economic Community, document 28.365). The Technical Committee agreed to include in its report of that session a text which would reflect the question asked in the draft advisory opinion prepared by the CCC Secretariat on this matter, but would offer various possible approaches to the question (document 28.560, paragraph 345). These documents and the record of the discussion on this matter contained in the report of the third session of the Technical Committee are reproduced in the annexes to this note.
3. In reporting on the work of the Technical Committee's third session to the Committee on Customs Valuation (VAL/M/4, paragraph 29), the Chairman of the Technical Committee drew attention to this question. He said that the phrase "occurring at or about the same time" in Article 1.2(b) had been interpreted in different ways by different countries and that consequently national legislation on this point was not uniform. He noted that there had been a consensus of opinion that it was not within the Technical Committee's powers to formulate a rule in these circumstances. He suggested therefore that the Committee on Customs Valuation might consider whether it wished to prepare an interpretative note with a view to achieving uniformity of practices regarding this matter or whether it might take the view that the differences were not important.
4. It would seem desirable that at its November 1983 meeting the Committee should be in a position to decide on the question posed by the Chairman of the Technical Committee, i.e. whether or not it would wish to pursue further the question of the time standard for test values under Article 1.2(b) of the Agreement with a view to achieving greater uniformity in this area. It therefore might be useful to give some preliminary thought to how this

matter might be taken up in November, including whether any further information on national practices might be useful (i.e. from those Parties applying the Agreement which have not already provided this information to the Technical Committee) and whether it might be appropriate to invite delegations having specific suggestions on how this issue might be treated to submit them in advance of the Committee's November meeting.

ANNEXES

- Annex I Time standard for text values under Article 1.2(b) of the Agreement: Note by the CCC Secretariat (CCC document 28.042)
- Annex 2 Comments by Canada (CCC document 28.227)
- Annex 3 Comments by Australia (CCC document 28.264)
- Annex 4 Comments by the United States (CCC document 28.325)
- Annex 5 Comments by the European Economic Community (CCC document 28.365)
- Annex 6 Extract from report on the third session of the Technical Committee on Customs Valuation, 15-23 March 1982 (CCC document 28.560)

ANNEX 1



CONSEIL DE COOPERATION DOUANIERE

CUSTOMS CO-OPERATION COUNCIL

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

CONSEJO DE COOPERACIÓN ADUANERA

28.042 E

V11-131

-
3rd Session
-

Brussels, 30 November 1981.

TIME STANDARD FOR TEST VALUES
UNDER ARTICLE 1.2 (b) OF THE AGREEMENT

1. At its Second Session the Technical Committee added to its programme of future work the subject "Establishment of test values". The intention was to put on record, as an advisory opinion, material regarding test values which appeared in a Secretariat draft concerning prices below prevailing market prices; action in that respect has been commenced by the issue of Doc. 28.004. In drafting that opinion another question relating to the use of test values arose, namely the time standard involved : the purpose of the present document is to set out this question and propose a solution.
2. As a result of its consideration of the time element with regard to Article 1 and Articles 2 and 3 the Technical Committee at its Second Session adopted an explanatory note on the subject.
3. Briefly stated, the note explains the Committee's conclusion that with respect to Articles 2 and 3, an external time element does exist in that, for uniformity of application, the Articles themselves provide that the Customs value determined thereunder is the transaction value of identical or similar goods exported at or about the same time as the goods being valued. With respect to Article 1, the Committee concluded that there is no time standard external to the actual transaction which would need to be taken into consideration when deciding whether the price actually paid or payable is a valid basis for the calculation of the Customs value. In doing so, the Committee noted that there is a reference to a time standard in paragraph 2 (b) of Article 1 but that it relates only to "test" values and thus does not influence the situation that there is not time element involved in determining transaction value under Article 1.
4. With respect to the time standard in Article 1.2 (b), a question exists as to the manner of its determination.

5. In Article 1.2 (b), the Agreement provides :
- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time :
- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
 - (ii) the Customs value of identical or similar goods as determined under the provisions of Article 5;
 - (iii) the Customs value of identical or similar goods as determined under the provisions of Article 6.
6. Accordingly the value in a sale between related persons is, when necessary, tested against the transaction value under subparagraph (i) or the Customs values under subparagraph (ii) or (iii) determined at or about the same time. The Agreement is silent, however, as to whether a value under subparagraph (i), (ii) or (iii) should be any one of those occurring at or about the time the goods under consideration are being valued or whether it should meet an additional time standard, e.g. by relating to goods sold (or alternatively exported or imported) at or about the same time as the goods under consideration.
7. If the time of valuation of the goods under consideration is the only reference point, conflicts or undesirable results could occur. For example, if the value being used for a test value was one determined under Article 6 (Computed value) by its very nature it could involve goods somewhat removed in time from the goods under consideration in terms of time of production, sale, export or import and thus, depending on market conditions, might lead to an unrealistic result which would be to the disadvantage of either the importer or the Customs administration. Because of the ninety-day time extension in subparagraph 1 (b) of Article 5, a value determined under that Article could also result in a test value being used which would be open to the same objections. The situation is not better with the use of transaction value of identical or similar goods under subparagraph 2 (b) (i) of Article 1. When a transaction value is determined, it may relate to a transaction significantly removed in time from that appropriate to the goods under consideration, for example when its determination has been delayed.
8. In view of the fact that the circumstances noted above could lead to a lack of uniformity in the application of the Agreement, resulting in uncertainties, the Committee may wish to consider whether, and in what manner, the issue should be resolved. As to the latter, a clarifying time reference could be selected from among the date of sale, the date of export or the date of import. It would appear that reference to

"goods exported at or about the same time" would establish a reasonably practicable external time standard and at the same time would be consistent with that contained in Articles 2 and 3.

9. As regards the form of decision, an advisory opinion would be one approach and a draft is annexed hereto for the Committee's consideration. The Committee may however also wish to consider drawing the attention of the Committee on Customs Valuation to the problem, with a view to the possibility of an Interpretative Note.
10. Written comments on this document and the Annex are invited by 8 January 1982.

x

x

x

ANNEX TO DOCUMENT 28.042 E

DRAFT ADVISORY OPINION

TIME STANDARD FOR TEST VALUES

UNDER ARTICLE 1.2 (b)

OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

1. What time is the reference point for the purpose of test values under Article 1.2 (b) of the Agreement ?

°
° °

2. The Technical Committee on Customs Valuation expressed the following opinion :

Article 1.2 (b) of the Agreement provides that in a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of three alternatives occurring at or about the same time. But if this were the only time standard to be taken into consideration, there could in many cases be a substantial difference between the conditions affecting the goods being valued and those affecting the goods furnishing the test value, and an unfair comparison could result. Considerations of consistency within the Agreement lead to the conclusion that the time of export, which is prescribed as the standard of comparison for the purposes of Articles 2 and 3, should be taken also as a time standard under Article 1.2 (b).

ANNEX 2



CONSEIL DE COOPÉRATION DOUANIÈRE

CUSTOMS CO-OPERATION COUNCIL

CONSEJO DE COOPERACIÓN ADUANERA

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

-
3rd Session
-

28.227 E

O. Eng.

V11-131

Brussels, 3 February 1982.

TIME STANDARD FOR TEST VALUES
UNDER ARTICLE 1.2 (b) OF THE AGREEMENT

(Doc. 28.042)

COMMENTS BY CANADA

The use of the time of export as the time standard for establishing a "test" value would be consistent with the amendments drafted to incorporate the Agreement in Canada's Customs Act. Under sub-Section 37(3) of those amendments, a "test" value is established, inter alia, by reference to the time of export of the goods to which the value relates.



CONSEIL DE COOPERATION DOUANIÈRE

CUSTOMS CO-OPERATION COUNCIL

CONSEJO DE COOPERACIÓN ADUANERA

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION-
3rd Session
-

28.264 E

O. Eng.

V11-131

Brussels, 5 February 1982.

TIME STANDARD FOR TEST VALUES
UNDER ARTICLE 1.2 (b) OF THE AGREEMENT

(Doc. 28.042)

COMMENTS BY AUSTRALIA

Document 28.042 sought comments from this Administration on the above-mentioned subject and on the draft advisory opinion annexed to the document.

Australia agrees with the Secretariat that this topic should be examined and believes that guidelines should be issued by way of an advisory opinion.

However, the approach already taken on time standards for test values under Article 1.2 (b) by this Administration, as reflected in Australian legislation is :

Article 1.2 (b) (i) - exported to Australia at or about the same time as the goods to be valued;

Article 1.2 (b) (ii) - sold in Australia at or about the same time as the importation of the goods to be valued;

Article 1.2 (b) (iii) - imported into Australia at or about the same time as the goods to be valued.

The approach for Article 1 (b) (i) is consistent with Articles 2 and 3 and that for Article 1.2 (b) (ii) is consistent with Article 5. Time of import was selected for Article 1.2 (b) (iii) as being the time most easily ascertainable by both the importer and the Customs authorities.

For these reasons Australia proposes this approach being taken in any advisory opinion.



CONSEIL DE COOPERATION DOUANIÈRE

CUSTOMS CO-OPERATION COUNCIL

CONSEJO DE COOPERACIÓN ADUANERA

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

-
3rd Session
-

28.325 E
O. Eng.
V11-131

Brussels, 22 February 1982.

TIME STANDARD FOR TEST VALUES
UNDER ARTICLE 1.2 (b) OF THE AGREEMENT

(Doc. 28.042)

COMMENTS BY THE UNITED STATES

1. In Article 1.2 (b) the Agreement provides :
 - (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time :
 - (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
 - (ii) the Customs value of identical or similar goods as determined under the provisions of Article 5;
 - (iii) the Customs value of identical or similar goods as determined under the provisions of Article 6.
2. The conclusion reached in the draft advisory opinion is that the time of export, which is prescribed as the standard of comparison for the purposes of Articles 2 and 3, should be taken also as a time standard under Article 1.2 (b).
3. Certainly the conclusion reached is not inconsistent with the Agreement; the United States Administration considers it appropriate however to adopt the approach suggested in paragraph 9 of the document and draw the attention of the Committee on Customs Valuation to the problem.

ANNEX 5



CONSEIL DE COOPÉRATION DOUANIÈRE

CUSTOMS CO-OPERATION COUNCIL

CONSEJO DE COOPERACIÓN ADUANERA

TECHNICAL COMMITTEE
ON CUSTOMS VALUATION

28.365 E

V11-131

-
3rd Session

-
Brussels, 4 March 1982.

TIME STANDARD FOR TEST VALUES
UNDER ARTICLE 1.2 (b) OF THE AGREEMENT

(Doc. 28.042)

COMMENTS BY THE EUROPEAN ECONOMIC COMMUNITY

1. The Community is not sure that the creation of a time standard for the application of test values falls within the scope of the Technical Committee's responsibilities as laid down in Annex II of the Agreement. Consequently the Community supports the idea of submitting the problem to the Committee on Customs Valuation, as proposed in the second sentence of paragraph 9 of the document.
 2. The time reference in the Community for the application of test values is the time of acceptance by the Customs of values declared. Although the time of export plays a role in regard to test values based on identical or similar goods, the importer could also present to the Customs test values established by reference to the deductive method and computed values. It therefore seems very doubtful that the time of export should enter into consideration on a generalized basis.
-

ANNEX 6

Extract from Report on the Third Session of the
Technical Committee on Customs Valuation
(15-23 March 1982) - Document 28.560 E

Agenda Item VI (m) : Time standard for test values under
Article 1.2 (b) of the Agreement

Docs. 28.042, 28.227, 28.264, 28.325
and 28.365

327. At its Second Session the Technical Committee added to its programme of future work the subject "Establishment of test values". The intention was to put on record, as an advisory opinion, material regarding test values which had appeared in a Secretariat draft concerning prices below prevailing market prices. In drafting that opinion another question relating to the use of test values arose, namely the time standard involved.
328. The Secretariat had therefore prepared Doc. 28.042 with the purpose of clarifying the interpretation of the term "occurring at or about the same time", used in Article 1.2 (b). As one possible approach to the question, a draft advisory opinion was annexed to that document for the Committee's consideration. The document also suggested that the Committee might wish to consider drawing the attention of the Committee on Customs Valuation to the problem.
329. The Chairman recalled the written comments that had been received, and asked for further comments. In his view, two issues were involved : firstly, should the matter be decided in this Committee or submitted to the Committee on Customs Valuation, which seemed to be advisable in the light of the opinions expressed by several administrations; and secondly, if the matter were put to the Committee on Customs Valuation whether this should be done by simply referring the question to the Committee or by transmitting everything relating to it, including the comments received from administrations.

330. The Argentine Delegation pointed out that, in the Spanish version, the word "Technico" should be deleted from paragraph 9 of Doc. 28.042.
331. The Delegation of Spain pointed out that at its Second Session the Technical Committee had adopted an explanatory note on the time element with regard to Articles 1, 2 and 3 of the Agreement, and had not found it necessary to refer anything specifically to the Committee on Customs Valuation. In his view, the Technical Committee's decision on this Agenda item should also take the form of an explanatory note.
332. The Chairman noted that several administrations had incorporated a time standard for test values in their legislation and that these solutions were not identical in every respect. The Agreement was not as clear on this point as it was with regard to Articles 1, 2 and 3. Accordingly, it might be felt that a strict interpretation would give rise to certain differences; to avoid these it would be desirable to refer the question to the Committee on Customs Valuation and assist the latter in finding a solution.
333. The Delegate of the Community supported the Chairman's proposal, pointing out that the signatory countries had variously interpreted the expression "occurring at or about the same time". As a result, test values had been presented on the basis of Articles 2, 3, 5 and 6, with reference to a different time element in each case.
334. The Delegate of the United States said that in his view there were many areas in the Agreement which left some degree of interpretation to national administrations. In addition, the Technical Committee was empowered to interpret and explain the terms of the Agreement but could not interpret or explain provisions or rules which did not exist in the Agreement; thus there was no rule in Article 1.2 (b) identifying a time standard for the various alternatives.
335. The Observer for Australia pointed out that his Administration had adopted concrete solutions based on specific Australian legislation; hence it would not be in a position to agree to different solutions unless the Agreement were amended accordingly.

336. The Observer for the International Chamber of Commerce agreed that some areas of the Agreement were open to different interpretations, but pointed out that one of the wishes expressed in the preamble to the Agreement was that the Parties should elaborate rules for its application in order to provide greater uniformity and certainty of treatment. In his opinion, the differences in interpretation ought to be very slight.
337. The Observer for Pakistan supported the Spanish Delegation's view that the question should be dealt with by adopting an explanatory note without consulting the Geneva Committee.
338. The Delegate of Brazil felt that the Technical Committee should study the question in depth, endeavour to take a decision and subsequently transmit the decision and the background material to the Customs Committee on Valuation.
339. The Director began by summarizing the discussion so far. He felt that the Report should reflect all the opinions expressed within the Technical Committee and also the fact that the legislations of a number of administrations differed with regard to the time standard for test values. The Secretariat had submitted the draft advisory opinion as one possibility and not as a rule based on the only acceptable or correct interpretation of Article 1.2 (b).
340. The Chairman pointed out that whereas in Articles 2 and 3 there was no ambiguity in respect of the time element, the expression "occurring at or about the same time" in Article 1.2 (b), referring to different valuation methods, allowed more than one interpretation.
341. The Delegate of the Community supported the Chairman's opinion concerning the ambiguity of the expression "occurring at or about the same time" for test values : strictly interpreted, it might create conflicts within the relevant Community legislation, given the fact that the EEC had opted for a c.i.f.-based valuation system under the facility offered by Article 8.2 of the Agreement.
342. The Chairman then proposed that the Committee should prepare a text based on the advisory opinion drafted by the Secretariat, in which it would be recognized that the provisions of Article 1.2 (b) did not rule out the possibility of selecting a time standard for test values.

343. The Observer for Australia, while recognizing the advantages of such a wording, proposed that the following phrase be added : "but other conclusions may also be valid".
344. The Delegate of the Community suggested the Report should reflect the various positions of the administrations. In his opinion, the Committee on Customs Valuation might feel that there should be greater uniformity in the solutions and would accordingly prepare an interpretative note, or it might take the view that the differences were unimportant. He wished to make it quite clear that even though there was a time element in Article 1.2 (b), there were not enough indications in it to enable a common fixed time standard to be adopted.
345. Finally, the Committee agreed to include in the Report on the session a text which would reflect the question asked in the draft advisory opinion but would offer various possible approaches to the question. Thus the question as to what time is the reference point for the purpose of test values under Article 1.2 (b) of the Agreement could be answered as follows :

Article 1.2 (b) of the Agreement provides that in a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of three alternatives occurring at or about the same time. But if this were the only time standard to be taken into consideration, there could in many cases be a substantial difference between the conditions affecting the goods being valued and those affecting the goods furnishing the test value, and an unfair comparison could result. The application of Article 1.2 (b) must be in a manner consistent with the principles of the Agreement. The time of export, which is the standard of comparison for the purposes of Articles 2 and 3, would be one approach, other time standards within the framework of the Agreement also being possible.