

RESTRICTED

VAL/Spec/3
16 December 1981

Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING HELD ON
4-5 NOVEMBER 1981

Chairman : Mr. E.-A. Hörig

1. The Committee on Customs Valuation held its third meeting on 4 and 5 November 1981.
2. The Committee adopted the following agenda:
 - (A) Accession of further countries to the Agreement
 - (B) Implementation and administration of the Agreement
 - (C) Use of various valuation methods by Parties
 - (D) Technical assistance
 - (E) Report by the Chairman of the Technical Committee
 - (F) Annual review of the operation of the Agreement and adoption of annual report to the CONTRACTING PARTIES
 - (G) Date and draft agenda for the next meeting
 - (H) Other business
- A. Accession of further countries to the Agreement
3. The Chairman recalled that since the second meeting Brazil had accepted the Agreement on 23 July 1981 and Spain had ratified the Agreement on 19 June 1981. On 14 August 1981, the delegation of Argentina had notified the Director-General of GATT that its government had decided to delay the application of the Agreement until 1 January 1986.
4. The representative of Japan welcomed the new developments since the last meeting of the Committee. With respect to the wider acceptance of the Agreement, he asked what the positions of Australia, Bulgaria and the Andean Group countries were.
5. The observer for New Zealand said that his country would join the Agreement by 1 July 1982. A large amount of preparatory work had already been carried out by the customs administration, and the trading community had been informed about the changes that would be introduced in the valuation system.

6. The observer for South Africa said that his country had decided to join the Agreement and to implement it by 1 July 1983. He recalled that the present valuation system, based on the Brussels Definition of Value, had been introduced only on 1 January 1978 to replace a previous system based on domestic value.

7. The observer for Peru on behalf of the Andean Group countries said that the five countries were presently examining whether they should as a group accede to the Agreement.

8. The observer for Chile said that his authorities were also looking into the question of acceding to the Agreement. The attention with which he had followed the work of the Committee should help towards making proper decision in this respect.

9. A member of the secretariat said that according to his understanding Bulgaria continued to be interested in acceding to the Agreement. Bulgaria had applied for accession to the Agreement on Technical Barriers to Trade and, pending the outcome of that particular exercise, this country had not yet formally applied for accession to the Agreement on Customs Valuation.

10. The representative of Brazil expressed the satisfaction of his delegation to participate in the work of the Committee. He said that his authorities had started to study the changes in the administrative machinery and the implementing legislation. The results of this work would be brought to the attention of the Committee as soon as it was completed.

11. In response to a question by a Party as to the expected date of application of the provisions of the Agreement, the representative of Spain said that, in accordance with the reservation made under Article 21, the application of the provisions of the Agreement would be deferred to 1 July 1986. The representative of the European Economic Community later in the discussion added that Spain would automatically be required to apply the EEC legislation on customs valuation if it became a member of the EEC before 1 January 1986. It was for this reason that Spain had not specified a time for the application of the Agreement.

12. The representative of the European Economic Community welcomed the accession of Brazil, the current work in New Zealand towards implementation, and the decision taken by South Africa to join the Agreement with effect from 1 July 1983. He expressed the hope that other countries, in particular developing ones, would be encouraged to take the same decisions. He urged these countries to accelerate their work in order to participate fully in the activities of the Agreement.

13. The Chairman underlined the importance of further countries acceding to the Agreement at the earliest possible date.

B. Implementation and administration of the Agreement (VAL/1 and Addenda and Supplements and VAL/2/Rev.1 and Addenda and Supplement)

14. The Chairman recalled that at the second meeting the Committee had started to carry out a detailed examination of the national implementing legislation. The texts of national legislation had been received from all Parties that were presently applying the Agreement. These texts had been reproduced in VAL/1 and Addenda and Supplements. In addition, national legislation which was not in an official GATT language had been made available in the respective languages for inspection in the secretariat by Austria, Finland, Hungary, Japan, Norway and Sweden. Replies to the checklist (contained in VAL/2/Rev.1) had been submitted by Austria, the EEC, Finland, Hungary, Japan, Norway, Sweden and the United States and were contained in the Addenda to document VAL/2/Rev.1. He recalled that any additional information given in the Committee had been reflected in the minutes of the last meeting (VAL/M/2, paras. 15-52). He suggested that the Committee continue the examination of national legislations on the basis of the replies to the revised checklist.

15. In a general statement, the representative of India said that the mere fact that objections had not been raised against a particular legislation in the course of its examination in the Committee could and would not convey to it any additional "sanctity" or acceptability. Each delegation should be free to bring up any matter relating to a specific legislative text that had been the subject of prior examination in the Committee even at a later date.

16. The representative of Canada informed the Committee that the Tariff Board had submitted its report on the draft legislation on customs valuation which had been sent to it in August 1980. Following the publication of that report in April 1981, several signatories to the Agreement had sent the Canadian government comments on the proposals formulated by the Board. The Canadian government had not yet concluded its examination of the report, but that examination, which took account of the comments received, was very far advanced. The Canadian government was expected to state its position on the substance of the questions dealt with in the report very shortly. In August 1980, the Canadian government had also requested the Tariff Board to examine the effects of the adoption of the Agreement on the protection afforded by the Canadian customs tariff and to report on that question before 1 July 1983. The period between receipt of the second report and 1 January 1985 would allow the Canadian government to take decisions on the necessary tariff adjustments and to discuss them with its trading partners.

17. The representative of the United States said that his authorities had expressed concern about the new Canadian valuation statute and regulations, issued in August 1980 by the Department of Finance because they did not go far enough in carrying out the letter and the spirit of the provisions of the Agreement. Further improvements were necessary before the legislation was finalized. The draft legislation provided no elaboration on how Canadian customs was to determine, apart from the pricing test, whether or not the relationship between buyer and seller had influenced the price. Likewise no provisions were included requiring notification to the importer on how the customs value was determined, as provided for in Article 16 of the Agreement. The draft legislation also did not spell out appeal procedures available for importers in the case of disputed value determinations; if these procedures were not contained elsewhere in the Canadian legislation, adequate provisions should be made in the customs valuation legislation to deal with this. Concern was also expressed about the lack of inclusion of the Interpretative Notes of the Agreement. Finally, the prohibited value standards of Article 7 of the Agreement were not provided for in the draft legislation. Other more specific comments would be provided in writing to the Canadian delegation and it was hoped that due consideration would be given to these comments.

18. The representative of the European Economic Community said that he shared the concerns expressed by the previous speaker. He urged the Canadian government to incorporate the Agreement faithfully in the law. If departures from the text of the Agreement were introduced, it was necessary that the alternative wording produced the same results.

19. The representative of Canada said that the comments received would be taken into consideration. The existing Canadian appeal procedures would continue to be applied in the future. There was no obligation to transpose the exact wording of the Agreement into national legislation but to properly apply its provisions. The Canadian draft legislation had been prepared in the light of this objective.

20. The representative of the European Economic Community agreed with the point made that there was no obligation to incorporate the Agreement in the national legislation but underlined that such an incorporation would only facilitate the adaptation of the national legislation to the provisions of the Agreement, thus avoiding possible problems of interpretation in the future.

1. Austria (VAL/1/Add.10 and VAL/2/Rev.1/Add.3 and Suppl.1)

21. The representative of Spain referred to question 1(a)(iv) of the checklist and the corresponding written reply by Austria and asked why the expression "closely approximates" contained in Article 1:2(b) of the Agreement had been replaced by "corresponds to" in the Austrian legislation.

22. The representative of the United States said that the treatment of identical and similar goods in paragraph 1 of Sections 4 and 5 of the Austrian Customs Valuation Act differed from the text of the Agreement in that the Austrian Act referred to goods imported at or about the same time, whereas the Agreement referred to goods exported at or about the same time. He asked why this change had been introduced in the Austrian legislation.

23. The representative of the European Economic Community referred to the expression "price fluctuations normal in the branch of trade concerned" in Section 3(4) of the Austrian Customs Valuation Act and asked in which way the customs administration would determine that a price fluctuation was normal. He pointed out that this expression introduced an additional complication in the valuation of goods.

24. The representative of Austria replied that the answers to the questions raised would be given at the next meeting or sent in a written form before that meeting.

2. European Economic Community (VAL/1/Add.2, Suppl.1 and 2, VAL/2/Rev.1/Add.6)

25. The representative of Japan said that his delegation had not had sufficient time to study the EEC submissions and reserved the right of his delegation to raise questions, if any, at the next meeting of the Committee.

26. The representative of the United States said that his authorities had not had the opportunity to fully review the answers of the EEC to the checklist of issues and reserved the right of his delegation to come back to this document at a later time if necessary. With respect to the EEC implementing legislation, he voiced several concerns: in Article 10 paragraphs 2 and 3 of Council Regulation No. 1224/80 of 28 May 1980 the EEC had set out certain provisions on confidentiality, which tended to broaden the application of Article 10 of the Agreement in that information which was otherwise confidential might be disseminated to authorities within the EEC who should not normally receive such information. With respect to Article 21 of the same Council Regulation, he wondered whether the provisions adopted by the EEC member States, which had to be communicated to the Commission, could not be submitted to the Committee for its information. In relation to Commission Regulation No. 1577/81 of 12 June 1981 which had established a system of simplified procedures for the determination of the customs value of certain perishable goods, his authorities were not entirely convinced that this Regulation was in full compliance with the provisions of the Agreement; the application of this Regulation would be monitored very

closely and in case difficulties arose, his authorities would revert to this matter in a future meeting of the Committee.

27. The representative of the European Economic Community replied that paragraph 2 of Article 10 of Council Regulation No. 1224/80 modified only very slightly the provisions of Article 10 of the Agreement by providing that information might be disclosed to the Commission. This modification was necessary to enable the Commission to carry out its functions of ensuring that the Agreement was applied in a uniform manner throughout the EEC. Article 10 paragraph 3 of the Council Regulation required that the Commission exercised its discretion in the treatment of information received which was subject to professional secrecy. It provided also that the Commission should not communicate this information to other persons except to the extent that these might be required to have access to them by virtue of the functions they exercised. Such a situation could arise in the context of judicial proceedings before the European Court of Justice or in relation to the Court of Auditors whose function was to ensure that money had been properly received and accounted for. With respect to Article 21 of the Council Regulation, the reference contained therein related to "informative notices" that member States might have issued to their respective customs administrations or to the public in the course of implementing the Council and Commission Regulations; with the exception of some customs instructions which remained confidential, these "informative notices" could be made available to the United States delegation. The representative of the European Economic Community expressed his willingness to discuss any problems that might arise from the simplified procedures bilaterally or in the Committee; these procedures were completely consistent with the provisions of the Agreement, were optional and had been introduced at the request of the importers concerned.

3. Finland (VAL/1/Add.4 and Suppl.1, VAL/2/Rev.1/Add.5)

28. The representative of Spain said that while Article 28 of the Finnish Customs Valuation Act provided for written explanations to be given by the customs administration to the importer on how the customs value had been determined, it did not foresee written explanations in the sense of Article 1.2(a) of the Agreement, i.e. for cases where the customs administration had grounds for considering that the relationship had influenced the price. With respect to Article 15 of the Finnish Customs Valuation Act he pointed out that Article 1.2(b) of the Agreement was not correctly reflected in the Finnish legislation. With respect to Article 7.2 of the Agreement, he said that no corresponding Article dealing with minimum customs values could be found in the Finnish legislation.

29. The representative of the United States said that Article 15 of the Finnish Customs Valuation Act did not adequately reflect the provision of the Agreement that the relationship between the buyer and the seller should not in itself be grounds for regarding the transaction value as unacceptable. Moreover, Article 17 of the Act referred to the

importation of goods whereas the Agreement provided for goods sold for export.

30. The representative of Finland replied that his authorities had no intention to establish minimum values. With respect to Article 28 of the Finnish Customs Valuation Act, he said this provision covered all types of information and explanation to importers. Moreover, if certain provisions in the Finnish legislation failed to be clearly defined, reference could always be made to the GATT Agreement which was in force in Finland. The provision of Article 15 of the Act concerned only cases where the relationship had influenced the price; Article 14 clearly stated that where the buyer and seller were related, the transaction price was accepted as customs value, provided that the relationship had not influenced the price. With respect to Article 17, the representative of Finland recognized that a slight deviation from the language of the Code existed and his authorities were considering a possible modification of the legislation. In the interpretation of the expression "at or about the same time", a certain degree of flexibility had to be exercised. This concept had been defined by the Customs Board of Finland as not more than two months before and not more than two months after importation.

31. The representative of Spain said that his question did not refer to the time-limit of approximation but to the lack of precision in Article 15 of the expression "goods imported at or about the same time". He suggested that the discussion be continued on a bilateral basis.

32. The representative of the European Economic Community said that the point raised by the previous speaker was a valid one. In establishing the rules relating to test values and the expression "occurring at or about the same time", reference was made in the Agreement to already established transaction values or customs values which were on file at or about the same time as the importation under consideration. The reference was deliberately not made to exportation. He made a plea that, if the Finnish legislation was amended, it would be desirable that it reflected accurately the letter of the Agreement, in particular in relation to Article 1.

33. The observer from the Customs Co-operation Council advised the Committee that a document from the Customs Co-operation Council would draw the attention of the Technical Committee to the question of the criteria used in test values. This document concluded that, while the Technical Committee might wish to study the issue, it might be a question that the Committee would have to take up from the point of view of an interpretation of the Agreement.

4. Hungary (VAL/1/Add.6, VAL/2/Rev.1/Add.4)

34. In answer to questions concerning sales between related persons and the prohibitions found in Article 7.2 of the Agreement, the representative of Hungary said that the Agreement formed an integral part of the Hungarian legislation, that its provisions were directly applicable and that it had therefore not been considered necessary to draw up a specific national legislation. With respect to the price of

lost or damaged goods, he said that at the time of customs clearance, the customs administration was not in a position to evaluate the extent of the damage and the importer should therefore pay the full customs duty. If subsequently the seller or the insurance company refunded a certain part of the purchase price, the importer could request a refund from the customs authorities within one year.

35. In answer to a question concerning the optional provisions, e.g. Article 8.2 of the Agreement, the representative of Hungary said that for the time being the Agreement could be applied directly. Special legislation had been enacted concerning the right of appeal. The conversion of currency had been covered by legislation that had existed and the applicable exchange rates were published once a week since November 1981. In addition, his authorities were prepared to consider a change in the legislation, taking into account any comments made in the Committee as well as the experience of other Parties.

36. With respect to a question relating to the treatment of by-products, the representative of Hungary said that the law was based on the situation that Hungarian firms undertook job work of a large value. Goods imported for job work (processing and finishing) were treated as temporary admissions. By-products and waste remaining in Hungary after the job work was done were subject to customs clearance for internal use. The provision quoted in reply to question 5, based on Article 7 of the Agreement, made it possible to determine the customs value of by-products and waste at a lower rate than they would have been for the initial total shipment.

5. Japan (VAL/1/Add.7, VAL/2/Rev.1/Add.8)

37. The representative of Japan made a general comment concerning the relationship between the Agreement and the Japanese implementing legislation. In its Article 98, the Constitution of Japan provided that treaties concluded by Japan should be faithfully observed. When an international treaty was promulgated, it had the effect of domestic law. In its Article 3, Japanese customs law provided that customs duty should be levied on any imported goods under the customs law, the customs tariff law and any other laws pertaining to customs duty. However, special provisions should apply in cases where a treaty provided for this in relation to customs duties because the treaty had a stronger legal force than the domestic legislation.

38. The representative of the United States said that in view of the late submissions of the replies to the checklist by Japan, questions would be sent to the Japanese delegation in order to obtain answers on a bilateral basis.

6. Norway (VAL/1/Add.11 and Corr.1, VAL/2/Rev.1/Add.7)

39. The Chairman said that, due to the late submission of the replies by Norway to the checklist, the delegation of Norway should be prepared to receive written questions from interested delegations before the next meeting of the Committee.

7. Romania (VAL/1/Add.8)

40. The representative of Romania advised the Committee that replies to the checklist would be sent to the secretariat in due course. With respect to questions 1(a)(i), (ii) and (iii), he said that the answer was negative. The reply to questions 2, 3, 4 and 5 was that the provisions of Articles 4 - 7 of the Agreement had not yet been applied. The Interpretative Notes, referred to in question 13 had been published, together with the Agreement, in the Official Bulletin No. 47, Part I, of 16 June 1980.

8. Sweden (VAL/1/Add.3, VAL/2/Rev.1/Add.2)

41. The representative of Sweden said that the answer given in reply to question 1(a)(ii) should be regarded against the background of the customs procedure in Sweden. The importer had to declare in writing on a special form whether the buyer and seller were related or not. Even if the importer answered in the positive the declared value was accepted at the time of importation. The fact of intercompany prices was thus not considered prima facie as grounds for regarding the respective prices as being influenced. As was the practice in many other countries, a subsequent control in the form of an examination of accounts and other records of importing companies was carried out in the course of which an investigation might take place whether an intercompany price had been influenced by the relationship. In fact, practically all companies which declared intercompany prices had already been investigated according to the old customs valuation rules of the BDV. If an examination showed that the price had been influenced the value could be changed by the customs authorities within six months after the importation.

42. With respect to the concept of family, the representative of Sweden stated that there did not seem to be a need for a definition in the Swedish legislation and no request had so far been received from the importing community. The Swedish interpretation in this respect was very much in line with that of the EEC. Concerning the reply to question 1(a)(iii) relating to providing grounds in writing to the importer, it was neither necessary nor, for constitutional and judicial reasons, possible to make provisions in the customs value ordinance which were already included in laws of a more general nature. Some of the provisions of the Agreement were contained in a general administrative law and in a customs procedure law; this applied for example to provisions on communication and matters reflected in questions 8, 9, 11(a) and 12(a). These texts as well as the one relating to the right of appeal would be made available to the Committee. It was also to be noted that the instructions given to the Board of Customs were, according to Swedish judicial rules, to be regarded as a part of the legislation on customs valuation.

43. In relation to the time element, the representative of Sweden pointed out that this issue had been debated in the Technical Committee and that the Swedish authorities were of the opinion that no time element had been built into the Agreement. He suggested that the

Committee asked the Parties what rules had been built in their respective legislation and consider whether it was possible to reach an agreement in this respect. The customs procedure law in Sweden contained provisions to this effect; the relevant sections of these laws, as well as the regulations concerning the right of appeal, would be forwarded to the Committee for circulation.

9. United States (VAL/1/Add.1, Suppl.1-3, VAL/2/Rev.1/Add.1)

44. The representative of the European Economic Community expressed concern that the United States Special Customs Invoice 5515 continued to require the importer to provide information on the home market price of the imported goods. Domestic prices in the country of exportation could under the Agreement not be a basis for valuation and he wondered why it was felt necessary that this information still be provided. With respect to the definition of related persons, a provision had been added concerning "any officer or director of an organization and such organization", a term which did not appear in the Agreement. Similarly, the provisions relating to the deductive method and the value added for further processing contained a time limit of 180 days after importation which was not foreseen in the Agreement.

45. The representative of Japan asked whether the United States legislation contained a precise definition of ancestors and lineal descendants. The second question concerned the relation between Section 152.106(f)(2) on availability of information and Article 6.2 of the Agreement. The third question dealt with the legal basis allowing the use of ex-factory prices as a basis for the transaction value. The last question concerned the lack of an answer to question 11(b) of the checklist.

46. The representative of the United States said that customs officers had been instructed not to seek information on the home market price of imported goods. The provisions on related persons which were a carry-over from previous United States law, were in conformity with the Agreement in that an officer or a director of a corporation, being paid by it, was its employee. The 180-day period was foreseen in the United States legislation for administrative reasons in order to conclude the valuation process within a reasonable time period because all customs entries had to be liquidated within one year after importation. There had been no need to include into the United States legislation a definition of ancestors and lineal descendants. The United States provisions on availability of information corresponded to Article 6.2 of the Agreement; since the adoption of the Agreement, no investigation under Article 6.2 had been carried out in a foreign country. The legal basis for recognizing ex-factory prices related to the definition of the price actually paid or payable; if a contract was concluded on that basis, the customs would accept the ex-factory price as the transaction value. A particular answer to question 11(b) was not needed since all goods imported into the United States were released within a period of ten days.

47. The representative of the European Economic Community formally requested that the present version of Customs Invoice 5515 should be

replaced by a new one in which the element of home market price did not appear. The EEC had received complaints in this respect. The representative of the United States replied that the issue of a new customs form would be a costly process and that at this stage instructions to customs officers not to request information on home market prices seemed satisfactory to the United States administration.

C. Use of valuation methods by Parties

48. The Chairman recalled that at the second meeting, it had been concluded that data on the method of valuation used for entries during a certain period of time should be collected. The data were to be provided on a percentage basis with reference to each valuation method and were to be accompanied by an indication of the way they had been arrived at (VAL/M/2, paras. 65-75). Communications had been received from the European Communities, Finland, Hungary, Japan, Romania, Sweden and the United States and circulated as addenda to VAL/W/5.

49. The representative of Austria said that about 90 per cent of the entries into Austria had been valued under Article 1 of the Agreement. Articles 2 and 3 had been used in very rare cases and Article 7 had been applied in the other remaining ones.

50. The representative of Sweden, supported by the representative of Romania, expressed the satisfaction of his delegation that, in the light of the communications received, so many Parties had, following the Preamble of the Agreement, used the transaction value to the greatest extent possible.

51. The representative of the European Economic Community said that his delegation had been encouraged by the figures presented which confirmed the basic assumption made in the Multilateral Trade Negotiations in favour of the transaction value. This result might possibly also allay certain of the fears of the developing countries in respect of the Agreement. A provision enabling these countries to limit the use of the choice under Article 4 had been introduced in the Protocol because of their fears of being swamped with requests for the use of the computed value method. He was pleased to see that in the United States the use of that method which the EEC had always considered as a method of last resort, had decreased from 13 per cent under the old law to 2 per cent under the Agreement. The methods provided in Articles 2 and 3 which had also caused concern to some developing countries, had not been used to a great extent, except by Hungary. The countries who had previously expressed certain apprehensions should be reassured by the limited use of Articles 2, 3 and 6. In reply to a question, the representative of the EEC pointed out that 2 per cent of the entries into the EEC had been valued under the provisions of Article 7 rather than Article 6 because the importers concerned had been unwilling or unable to provide the specific information required for a determination of the computed value.

52. In reply to a question, the representative of Hungary said that the figures concerning Hungary had been based on July-September 1981 imports. The relatively high figure for values established under

Article 2 had to be explained by the high proportion in Hungarian imports of job work and leasing for which no transaction value existed.

53. The representative of India and the observer for New Zealand expressed their satisfaction that the transaction value had been used to a large degree.

54. After an exchange of views, the Chairman concluded that the item would remain on the agenda. This would give an opportunity for some delegations to submit additional and possibly more detailed information. Some time was needed to evaluate the information received. In a future meeting, the question should be discussed whether the information to be provided should also include the volume of trade and whether further statistics should be collected on the basis of an identical time period for all Parties.

D. Technical assistance

55. The Chairman recalled that at the second meeting, the Committee agreed that this item be put on the agenda as a permanent point in order that specific requirements for technical assistance be reviewed (VAL/M/2, para. 81).

56. The representative of Austria said that the customs administration had organized training seminars for the last 15 years for officials from developing countries. More recently, an essential item at these seminars was the new valuation system of the GATT Agreement. This was considered as an effective contribution in the context of technical assistance.

57. The representative of the European Economic Community said that a one-week seminar had been held in Montevideo in October 1981 in conjunction with the Latin American Integration Organization. The team of experts had included four experts from the member States of the EEC and a representative of the Customs Co-operation Council. The purpose of the seminar had been to explain the intentions and the practical implications of the Agreement. The 35 participants originating from 8 out of 11 countries of the Organization had been customs or trade policy officials. The material used for the seminar could be made available on request.

58. The representative of Spain said that a seminar on the GATT Agreement was under way in Madrid with the participation of representatives from Latin American countries historically linked with Spain.

59. The representative of Finland said that since 1974 seminars on customs valuation had been organized in Helsinki, and that since the mid-1981 course lectures had been given on the GATT Agreement.

E. Report by the Chairman of the Technical Committee

60. The Chairman of the Technical Committee, Mr. Sawhney (India), stated that the report of the second session of the Technical Committee

which had been held from 28 September to 2 October 1981 was contained in CCC document 27.960. The Committee had adopted eight instruments on technical questions, seven advisory opinions and one explanatory note. It had laid the foundations for a further number of instruments which were hoped to emerge from the next session. It had also considered the important question of how its opinions and advice should be validated and published, and had adopted a study on this subject. This study recognized that the Technical Committee's conclusions were to play an important rôle in achieving uniformity in the interpretation and application of the Agreement and that this could be best achieved by the establishment of a reporting procedure whereby cognizance of the Committee's work was taken by both the Customs Co-operation Council and the Committee on Customs Valuation, each within its respective mandate, the Council under its Convention and the Committee on Customs Valuation under the Agreement. Either of these bodies might request the Technical Committee to further consider or re-consider any of its conclusions. As provided in the Agreement, these conclusions would normally take the form of advisory opinions, commentaries or explanatory notes and it was envisaged that these would be published by the CCC in a loose-leaf compendium.

61. The Chairman of the Technical Committee went on to say that with respect to technical questions, an advisory opinion on the concept of sale had been adopted by the Technical Committee which listed situations in which the imported goods would not be deemed to have been the subject of a sale. The Technical Committee had further adopted an advisory opinion setting out that if the conditions of Article 1.1 were met, a price lower than prevailing market prices should be accepted, although appropriate enquiries would of course be made by customs. Another advisory opinion adopted related to the meaning of "are distinguished" in the Interpretative Note to Article 1. With respect to the treatment of royalties and licence fees, the Committee had adopted four advisory opinions based on examples which illustrated the valuation treatment of royalties in various situations. An explanatory note was adopted concerning the time element in Article 1 and Articles 2 and 3 which sets out that for Article 1 no time standard external to the transaction itself exists so that market fluctuations after the date of the contract do not affect the value; on the other hand, the external time standard specified in Articles 2 and 3 was clearly necessary to provide uniformity of application. The Technical Committee also discussed eight other technical subjects. On at least four of them draft instruments for the Technical Committee to be considered at its next session in March 1982 were being prepared.

62. The representative of the European Economic Community welcomed the study on the form which opinions and advice given by the Technical Committee should take. It paved the way for closer co-operation between the GATT Committee and the CCC Technical Committee. He expressed some concern regarding the advisory opinion No. 4 about the treatment of royalties and licence fees in that the situation of a royalty paid for the patent incorporated in the imported goods could be extrapolated to the trade mark area and could produce unsatisfactory results. He invited the Technical Committee to reconsider the formulation of the introductory example in the opinion and to draft an advisory opinion on

the treatment of trade marks in similar circumstances. He also withdrew the EEC reservation about the title "Explanatory Note" relating to the time element and suggested that the Technical Committee elaborate guidelines as to the use of explanatory notes, advisory opinions and commentaries. Finally, he pointed out that the agenda of the next meeting of the Technical Committee should be less ambitious in order to allow more time for detailed discussions of particular subjects.

63. The representative of Switzerland said that his authorities would have preferred a more prudent approach, due to possible trade policy implications, concerning the advisory opinion on the concept of sale regarding the goods imported by branches which were not separate legal entities. He reserved the right of his delegation to revert to this item at the next meeting of the Technical Committee.

64. The Chairman of the Technical Committee said that on the point raised by the previous speaker there had been a considerable debate in the Technical Committee which had concluded that if the law of the country did not recognize the branch as a separate legal entity, two distinct personalities did not exist. For any concept of a sale, there had to be two distinct parties, a seller and a buyer. Certain legislations could provide for a situation where even a branch could be a separate entity, in which case probably there would be a sale. However, at its first meeting, the Technical Committee had decided to identify only situations where there was no sale. Regarding the treatment of royalties and licence fees, further consideration would be given by the Technical Committee to the problem raised. He advised that the Technical Committee would meet for seven working days at its next session.

F. Annual review and adoption of report to the CONTRACTING PARTIES

65. The Chairman recalled that at the second meeting (VAL/M/2, paras. 56-63) the Committee had agreed to conduct at the present meeting its first annual review of the implementation and operation of the Agreement, as stipulated in Article 26 of the Agreement. For this purpose the Committee had before it a background document by the secretariat (VAL/W/4) which followed an outline (VAL/W/3) previously elaborated. The background document set out - by way of reference, where appropriate - information on actions taken by Parties concerning the items covered by the document. This information had been made available in the normal course of the Committee's work and gave the situation as per the date of VAL/W/4.

66. The Committee reviewed the background document and, after having made a number of amendments, decided to circulate a revised version, annexing to it a survey of the use of various valuation methods.

67. The Committee adopted its annual report to the CONTRACTING PARTIES (L/5240).

G. Date and draft agenda for the next meeting

68. The Committee agreed to hold its next meetings on 4-5 May 1982 and 10-12 November 1982.

69. The draft agenda for the next meeting would include the following items:

- (A) Accession of further countries to the Agreement
- (B) Information on implementation and administration of the Agreement
- (C) Use of various valuation methods by Parties
- (D) Technical assistance
- (E) Report by the Chairman of the Technical Committee
- (F) Date and draft agenda for the next meeting
- (G) Other business

70. Other items might be included by the Chairman in consultation with delegations. The draft agenda for the next meeting would be circulated in accordance with established practice.

H. Other business

(i) Panelists

71. The Chairman recalled that nominations of persons available for panel service had been received from the following Parties: Canada, EEC, Finland, Hong Kong, India, Japan, Romania, Spain, Sweden and the United States. Referring to the provisions of Annex III, paragraph 2, the Chairman invited Parties which had not yet done so to make nominations and, at the beginning of 1982, to confirm the existing nominations or to present new ones.

72. The representatives of India and Spain said that for the year 1982 the panelists would be the same as for the present year.

(ii) Derestriction of documents

73. The Chairman recalled that at its first meeting the Committee had agreed on a procedure for the derestriction of documents (VAL/M/1, para. 18). The Chairman said that the secretariat would later in the year issue a note in the VAL/W series containing a proposal for derestriction of documents, in accordance with these procedures.

(iii) Agreed interpretation

74. The representative of the European Economic Community said that the work "undertaken" used in Article 8.1.b(iv) of the English version of

the Agreement could have two distinct meanings: "carried out" or "contracted for". Since the first of these appeared more consistent with the intention of the negotiators, as reflected in the French and Spanish versions of the Agreement, he invited the Committee to confirm this by an agreed interpretation, to be recorded in the minutes, which might be read: "The Committee agreed that in the context of Article 8.1.b(iv) of the Agreement the English word "undertaken" is to be understood as meaning "carried out". The French and Spanish versions were not affected.

75. Some delegations said that this item should be taken up at the next meeting of the Committee.

76. The Committee so agreed.