

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/Spec/5

6 December 1982

Special Distribution

Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING HELD ON 10-11 NOVEMBER 1982

Chairman : Mr. G.S. Sawhney

1. The Committee on Customs Valuation held its fifth meeting on 10 and 11 November 1982.
2. The Committee adopted the following agenda:
 - 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. Agreed interpretation of the word "undertaken" used in Article 8.1.b(iv) of the Agreement
 - G. Treatment of interest for deferred payment; valuation of computer software
 - H. Draft rules of procedures for amendments
 - I. Annual review of the operation of the Agreement and adoption of annual report by the CONTRACTING PARTIES
 - J. Date and draft agenda for the next meeting
 - K. Other business
- A. Accession of further countries to the Agreement
3. The representative of New Zealand said that as a result of the implementation of the Agreement by his country as from 1 July 1982, the valuation system based on the domestic value in the country of export, known as current domestic value, had been replaced by the new system. Necessary transitional arrangements had been introduced in a smooth and reasonable manner with the support of both commercial and industry groups. After extensive consultations, it had been decided to apply the Agreement on an f.o.b. basis which was closer to the previous valuation system of New Zealand.

4. The representative of the European Economic Community raised the question why Australia which was applying the Agreement had not yet become a signatory. He also made a plea to other contracting parties which had not yet signed the Agreement to accelerate the consideration of this matter. Considerable experience had by now been obtained from the application of the Agreement and the general conclusion was that the Agreement operated to the full satisfaction of both traders and customs. Experience showed that the concerns expressed by certain countries before accession to the Agreement had disappeared. This Agreement which facilitated international trade should be supported by all contracting parties. It was true that a number of technical issues were under discussion in the Customs Co-operation Council, but no major problems had been encountered. He urged contracting parties, especially developing countries, to participate fully in the activities of the Committee and expressed his readiness to discuss any problems that were faced by potential signatories.

5. The observer for Australia said that his authorities still had certain formalities to complete before signing the Agreement. All necessary decisions had already been taken. He expected that his country would be in a position to accede to the Agreement before the end of 1982.

6. The representative of the United States welcomed New Zealand and Yugoslavia to the Committee. He pointed out that Yugoslavia had chosen to lift its reservations under Article 21.1 and to implement the Agreement immediately. He expressed the hope that other countries would be able to follow this example.

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

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

7. The representative of the United States said that his authorities continued to be concerned in regard to the Austrian legislation relating to the time standard for identical and similar goods, which, contrary to the provisions of the Agreement, provided for the time of importation. He was prepared to discuss the issue on a bilateral basis with the representative of Austria.

2. Canada

8. The representative of Canada recalled that in the context of the domestic process towards implementation of the Agreement, the Canadian Tariff Board was conducting a study on the impact of the implementation of the Agreement on tariff protection, in the course of which the Board had held public hearings in June 1982. Before the end of this year, an appraisal of the evidence which would constitute a basis for discussion at

public hearings scheduled for early next year, would be issued. The final report, together with advice on tariff rate adjustments, would be provided to the Government by 1 July 1983. Discussions would be initiated shortly thereafter with other contracting parties.

9. The representative of the European Economic Community said that his authorities had raised a number of points relating to the Canadian draft legislation in writing but no reply had as yet been received. He hoped that the Canadian Government would give serious consideration to the issues which had been raised, and that ways would be found to take them into account in the context of the revision of the draft legislation. A major concern was that certain provisions of the Agreement, in particular the Interpretative Notes which had equal validity with the Agreement itself, did not feature in the Canadian legislation nor in its operational guidelines. For its part, the European Economic Community had faithfully transcribed all provisions of the Agreement into the EEC legislation, thereby creating rights for importers. It was doubtful whether Canadian importers would have the same rights since the Interpretative Notes were not contained in the Canadian Law itself but simply in instructions to the Customs.

10. The representative of the United Kingdom speaking on behalf of Hong Kong expressed the concern of his authorities that the Canadian draft legislation did not provide specifically for the right of appeal without penalty, as required by Article 11 of the Agreement.

11. The representative of Canada said that his authorities were considering substantive and detailed replies to the questions raised by the previous speakers. He reiterated the view expressed at the May 1982 meeting that all the rights which had been created by the Agreement would be fully respected. The representative of the European Economic Community reserved the right to come back to these and other questions at a later meeting of the Committee.

3. New Zealand (VAL/1/Add.12 and VAL/2/Rev.1/Add.10)

12. The representative of the European Economic Community said that New Zealand appeared to have substantially incorporated the provisions of the Agreement and most of the Interpretative Notes in its legislation. A number of points needed, however, some clarification. Clause 2(2) of the Ninth Schedule to the Principal Act seemed to imply that the test values were only to be used "for the purpose of showing that the relationship did not influence the transaction value". This wording would exclude the use of the transaction value, by recourse to test values, where the price had been influenced by the relationship. The representative of the European Economic Community reserved his right to come back to this issue if a problem arose in the application of the New Zealand law. Another point related to Clause 6(6)(b) which referred to "reasonable" transport costs rather than to "the usual costs" as provided for in the Agreement (Article 5.1(ii)). A further point concerned Clause 6(4) which introduced a time-limit of ninety days for the application of the deductive method for goods after processing

(Article 5.2 of the Agreement). In relation to Section 136 of the Customs Act 1966, as amended by Section 5(1) of the Customs Amendment Act 1981, the point was made that it provided for the use of the customs value of the imported goods except as otherwise expressly provided in the Act; this seemed to be contrary to the letter and spirit of the Agreement. Another point concerned the activities of New Zealand customs attachés abroad; considerable concern existed on the part of the EEC in this respect, in particular in view of Article 6 which provided that sufficient advance notice should be given to the government of the country of exportation. A last point concerned the publication of rates of exchange in the New Zealand Gazette "from time to time", a concept which did not seem to be very precise, especially since Article 9 required, for purposes of currency conversion, the use of the current value.

13. The representative of New Zealand replied that the wording of the Interpretative Note to Article 1.2 had been faithfully reflected in the legislation. Customs authorities would not automatically consider the existence of a relationship as having influenced the price. Any difference of language between the Agreement and the legislation should not be viewed as a diversion from the obligation of the Agreement. New Zealand legislation incorporated certain words which were in common use and which were understood by New Zealand experts. It should also be taken into account that the new valuation legislation represented a major change for New Zealand. In the instructions to the customs administration which had also been issued to the public, emphasis had been put on the neutrality, fairness and commercial reality of the new valuation system. The ninety-day provision had been introduced after consideration of the 180 day provision the United States legislation, but in the light of experience which New Zealand did not have at the present time, it would be prepared to re-examine the provision. In relation to the expression "except as otherwise expressly provided in this Act", the New Zealand legislation had always foreseen such a clause at the beginning of the section dealing with the valuation of goods. It was necessary to have the possibility to refer to a specific situation relating to particular tariff items in the case of threshold duty values.

14. The representative of New Zealand went on to say that on the application of Article 6.2, the New Zealand authorities were not seeking more information than necessary for the purpose of assisting exporters and facilitating their business. There was no intention on the part of New Zealand to obtain data from exporters unless, in their own interest, they agreed to provide information. On the last point that had been raised, i.e. the publication of rates of exchange, the representative of New Zealand stated that these rates were published on a monthly basis, a practice which had been in operation for a very long time and which seemed to ensure that the market value of currencies were reflected on a current basis.

15. The representative of the United States asked for clarification of Clause 3(2) of the Ninth Schedule to the Principal Act which provided that where an adjustment could not, in the opinion of the customs, be made

because of the lack of sufficient information, the transaction value could not be determined and the first method of valuation could not be applied. The question was how this provision related to Clause 3(1)(b) which drew from the Interpretive Note to Article 1 on the price actually paid or payable.

16. The representative of New Zealand replied that if additions under Article 8 of the Agreement had to be made on the basis of objective and quantifiable criteria, it was only logical that deductions under the Interpretative Note to Article 1, as reflected in Clause 3(1)(b), had to be effected using the same standard. The same applied to the c.i.f. elements of a transaction which were contained in the same provision.

4. Yugoslavia (VAL/1/Add.13)

17. The representative of the United States said that the provision of Article 10 of the Agreement relating to the confidentiality of information did not seem to appear in the Yugoslav Act. He wondered whether this provision was already covered in another Yugoslav law. With respect to the time standard for the use of identical and similar goods, he asked why the Yugoslav legislation specified the time of importation whereas the Agreement provided that the time of exportation should be used. He reserved the right to revert to the Yugoslav legislation at the next meeting of the Committee.

18. The representative of Yugoslavia replied that the answers to the questions raised would be given at the next meeting.

C. Use of various valuation methods by Parties

19. The representative of the European Economic Community said that the information on the various valuation methods used by the Parties had been very useful in demonstrating that the fears about the use of the computed value, which had been expressed when the Agreement had been negotiated, had not been confirmed; indeed, the computed value had been used very little by Parties. The first results had been reported in November 1981, after less than one year of operation of the Agreement. Since then, a number of countries had become signatories and it would be very useful to obtain more recent, comprehensive and comparable data. It would also help the Parties to see whether there were any redundant or obsolete methods. This exercise had to be carried out with the participation of all Parties applying the Agreement which should follow broadly the same approach. The first step would be for the Committee to agree on a methodology. The secretariat could, in consultation with interested delegations, produce a draft which could provide a basis for discussion at the next meeting. The delegations of Canada, New Zealand and Spain agreed with the views expressed by the delegation of the European Economic Community.

20. The representative of Japan said that his authorities were of the view that there was no need to collect additional and more detailed information,

including the volume of trade. It was already clear that most Parties were using the transaction value under Article 1 to the greatest extent possible.

21. The representatives of Norway, the United Kingdom speaking on behalf of Hong Kong and the United States stated that in their view a decision should be taken at a subsequent meeting on the basis of a methodology to be worked out.

22. After further discussion, the Committee decided to request the Technical Committee to submit to the Committee before its next meeting two or three methodologies that could be applied for determining more precisely the use of various valuation methods by the Parties.

D. Technical Assistance

23. The observer from the Customs Co-operation Council said that a proposal of a training programme in valuation for developing countries had been approved by the Policy Commission of the Customs Co-operation Council in June 1982. Despite the far-reaching influence of customs valuation on international trade, the nature of valuation lent itself to relative precision in terms of specifying programme objectives. A training course was being organized which should consist of four basic elements. The first contained the principles of customs valuation that would take the participants through the entire Agreement. The second element was the administration of customs valuation where the participants would be exposed to a variety of approaches to the management of declarations and the concepts of identical and similar goods, test values, etc. The third element was the enforcement, which was not strictly a part of the Agreement. Further work in the fraud area should reduce the apprehensions now held by many countries. The fourth element was the training of trainers. The training courses would be held at the Headquarters in Brussels, once a year to start. The course would be directed at officials who were charged with valuation administration and training in their home administrations. Between ten and twenty countries could be reached by one class which, given the multiplier effect when the participants started instructing in their home administration, would provide considerable benefits to the developing countries who would send officials to the course. The Plan for the Eighties which was contained in CCC document 28.656 would be the working project for the CCC in the forthcoming years.

24. The representative of Austria said that training seminars had been organized for officials from developing countries by the Austrian customs administration for the last sixteen years. The Agreement on Customs Valuation was an essential item at these seminars. This was considered as an effective contribution in the context of technical assistance.

25. The representative of Finland said that courses on customs valuation for developing countries had been organized since 1974. A substantial part of the courses was dedicated to the Agreement on Customs Valuation. The

last course with seventeen participants from Asian, African and South American countries included also some instruction on the implementation of the Agreement as well as a comparison between the Agreement and the Brussels Definition of Value.

26. The representative of the European Economic Community referred to Article 21.3 of the Agreement which required developed country Parties to furnish, on mutually agreed terms, technical assistance to developing country Parties. For the EEC, it had been made clear that it was ready to extend such assistance to all developing countries, whether signatories or not. The EEC was interested in organizing meetings, usually on a regional basis, to explain to the decision-makers the Agreement and to dispel certain of the fears that existed about the possibility of taking measures to combat fraud, which were consistent with the Agreement. In this context, a seminar would be held in early December 1982 in Manila for member States of ASEAN with the participation of the EEC, the United States, the GATT and the CCC secretariats. Requests had been received by the EEC from the Latin American Association of Integration (ALADI) for a second seminar as well as from the Caribbean Common Market (CARICOM) and from Kenya for seminars which were expected to be held in the first half of 1983. The representative of the EEC expressed the hope that other developed countries as well as the CCC and the GATT would participate in these seminars. Another type of technical assistance concerned the preparation of legislation and instructions to customs officers and to traders. To some extent, the work which was being done in the CCC might be relevant. This was an area where some thought should be given to preparing a model legislation which could be used by new signatories.

27. The representative of the United States said that considerable efforts had been made in his country to provide funds to allow his country to become an active participant in technical assistance programmes. It would be helpful to his authorities, in terms of resource planning, if developing countries which had an interest in receiving technical assistance made their desire known.

E. Report by the Chairman of the Technical Committee

28. The Chairman of the Technical Committee stated that the report of the fourth session of the Technical Committee which had been held from 20 to 24 September 1982 was contained in CCC document 29.260. During this session the Technical Committee had adopted the following:

- (a) a report on the practices followed with respect to the treatment of interest for deferred payment, which had been circulated subsequently by the Committee in document VAL/W/10;

- (b) a report on the practices followed with respect to the treatment of computer software, which had been circulated subsequently by the Committee in document VAL/W/11;
- (c) guidelines on the designation and use of instruments in the Technical Committee (advisory opinions, commentaries, explanatory notes, case studies and studies);
- (d) the texts of four examples illustrating the principles set out in the published commentary on the determination of identical or similar goods;
- (e) a text of an advisory opinion concerning the deduction of anti-dumping and countervailing duties when applying the deductive method;
- (f) a study on the treatment of used motor vehicles.

29. The Chairman of the Technical Committee then drew the attention of the Committee to the questions which would be taken up at the next meeting of the Technical Committee, which included the following: royalties and licence fees in relation to goods sold either with or without trademarks; cash discount available at the time of valuation; treatment of goods returned after temporary exportation for manufacture, processing or repair; a case study on Article 8.1(d).

F. Agreed interpretation of the word "undertaken" used in Article 8.1(b)(iv) of the Agreement

30. The Chairman recalled that at the fourth meeting (VAL/M/4, paragraphs 31-35) some delegations had reserved their position on the proposal by the European Economic Community for an agreed interpretation of Article 8.1(b)(iv) of the Agreement according to which the English word "undertaken" was to be understood as meaning "carried out". No changes in the French or Spanish texts of the Agreement were necessary.

31. The representative of Japan said that his authorities were still examining the proposal. The word "undertaken" was not only used in Article 8.1(b)(iv) but also in Article 15.2(c) and in the Interpretative Notes, i.e. in the General Note on the use of generally accepted accounting principles, the Note to Article 1.1(b) and the Note to Article 6. Furthermore, in the Note to Article 8, the word "production" was used in the same meaning as "undertaken". Therefore, his authorities were of the opinion that, before reaching any final conclusion on the interpretation of the word "undertaken", it was necessary to consider the implications of the proposed interpretation. In this connection, his authorities requested the Technical Committee of the Customs Co-operation Council to study the implementation of the word "undertaken" by the Parties.

32. The representative of the United States said that there was no particular difficulty with the word "undertaken" to be understood as meaning "carried out", so long as due account was taken of paragraph 7 of the Interpretative Note to Article 8.1(b)(iv); in cases where the production involved a number of countries, it was expected that the word "carried out" would not be taken to mean that all of the activity had to be necessarily carried out in the country of importation.

33. The representative of the European Economic Community said that the proposal was appropriate to all cases where the word "undertaken" was used. His delegation was disappointed that Japan had still a reservation on this proposal which had been tabled over a year ago. The EEC did not see this matter as requiring a formal Committee decision but favoured an agreement of the Committee on the way in which the word was generally interpreted. His delegation made a plea to Japan and to any other delegations which still had a problem with the issue to resolve it before the next meeting, through bilateral discussions if necessary.

G. Treatment of interest for deferred payment; valuation of computer software

34. After detailed discussions of proposals concerning decisions designed to clarify the treatment of interest charges for deferred payment in the customs value of imported goods (VAL/W/13) on the one hand and the valuation of computer software (VAL/W/14) on the other, the Committee decided to consider these two proposals further at its next meeting in March 1983. The proposals would be revised in the light of the comments made and would be circulated to the members of the Committee by the end of December 1982. In this connection the secretariat was requested to circulate before the next meeting a paper setting out the legal aspects of Committee decisions as opposed to the amendment procedure, and the relevant experience in other NTM Committees.

H. Draft rules of procedures for amendments

35. The Committee had a preliminary exchange of views on procedures for amendments to the Agreement under Article 27. The Committee agreed that for the time being there was no need to pursue this matter further.

I. Annual review of the operation of the Agreement and annual report to the CONTRACTING PARTIES

36. The Committee conducted its second 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/12) which followed an outline (VAL/W/9) 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.

37. The Committee reviewed the background document and, after having made a number of amendments, decided that a revised version be circulated by the secretariat.

38. The Committee adopted its annual report to the CONTRACTING PARTIES which is contained in L/5412.

J. Date and draft agenda for next meeting

39. The Committee agreed to hold its next meetings on 3-4 March 1983 and 10-11 May 1983.

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

- A. Accession of further countries to the Agreement.
- B. Technical assistance.
- C. Agreed interpretation of the word "undertaken" used in Article 8.1.b(iv) of the Agreement.
- D. Treatment of interest for deferred payment; valuation of computer software.
- E. Date and draft agenda for the next meeting.
- F. Other business.

41. 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.

K. Other business

(i) Panelists

42. The Chairman recalled that nominations of persons available for panel service had been received from the following Parties: European Economic Community, Finland, India, Japan, Norway, Spain, Sweden, United Kingdom for Hong Kong, United States. Referring to the provisions of Annex III, paragraph 2, the Chairman invited Parties which had not yet done so to confirm the existing nominations or to present new ones.

(ii) Derestriction of documents

43. The Chairman recalled that at its first meeting the Committee had agreed on a procedure for the derestriction of documents (VAL/M/1, paragraph 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.