

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/Spec/9

8 December 1983

Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING HELD ON 10-11 NOVEMBER 1983

Chairman: Mr. J. Goizueta

1. The Committee on Customs Valuation held its eighth meeting on 10-11 November 1983.

2. The following agenda was adopted:

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A. Accession of further countries to the Agreement

3. The Chairman recalled that, since the Committee's last meeting, South Africa had accepted the Agreement, on 1 June 1983. He welcomed the South African delegation as a Party to the Agreement and member of the Committee.

4. The Chairman said that, as indicated in document VAL/W/22, the Government of Botswana had communicated on 31 May 1983 its wish to accede to the Agreement. As a country which was not a contracting party nor provisionally acceded to the GATT, the provision of the Agreement that would govern Botswana's accession was Article 22.3, which called for terms of accession related to the effective application of rights and obligations under the Agreement, to be agreed between the acceding government and the Parties. Following informal consultations among Parties, the draft terms of accession annexed to document VAL/W/22 had been drawn up. These took account of Botswana's status as a country applying the GATT on a de facto basis. Document VAL/W/22 also contained a number of points on which the Committee might agree for inclusion in its minutes at the same time as agreeing on the terms of accession of Botswana. He added that the Government of Botswana had been kept informed and consulted regarding these draft terms of accession.

5. The representative of Switzerland said that he would wish to see the first part of the first sentence of the text of the declaration read as follows:

"Upon accepting the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade in accordance with Article 22.3 of that Agreement, the Government of Botswana declares..."

He further considered that the explicit mention of GATT Article XXIII in the first paragraph of the draft terms posed some legal problems. It had to be recognized that Botswana would be undertaking legal rights and obligations only as far as the Customs Valuation Agreement was concerned while still applying the General Agreement on a de facto basis. He was thus of the view that, as Botswana was not a contracting party to the GATT, it was not possible, for legal reasons, to state in the terms that Botswana would apply Article XXIII. The competence of the Committee and of the Agreement could not go beyond the Agreement itself. He therefore proposed the deletion of the reference to Article XXIII, and also suggested the removal of the references to Articles I and VII since it would be undesirable to single out these Articles when certain other GATT provisions might be equally applicable.

6. In response to a request for his opinion, the Director of the Office of Legal Affairs said that, although the reference to Article XXIII in the text was not legally impossible, it would not have any practical effect taking into account Botswana's position as a country applying the General Agreement on a de facto basis. Botswana's de facto application applied to all relevant Articles of the GATT; however, it was very doubtful that it could be maintained that Article XXIII was relevant in this respect. Moreover, the Agreement on Customs Valuation only regulated relations between Parties to that Agreement; terms of accession to that Agreement could not create rights and obligations under the General Agreement. Any dispute that arose in the context of the Code involving a Party which had not acceded to the General Agreement would have to be dealt with under the dispute settlement provisions of the Code rather than under those of GATT Article XXIII. In conclusion, he said that, although he did not think that it was legally impossible to refer to Article XXIII, he would have a strong preference for not doing so since he doubted that such a reference would be meaningful and it was desirable to avoid incorporating in legal texts references whose meanings were not clear. He added that he saw no problems of a legal nature with the references to GATT Articles I and VII.

7. The Committee then accepted the deletion of the reference to Article XXIII in the draft.

8. Responding to a query regarding the significance of the reference to GATT Article XXIII in Article 20.11 of the Code, the Director of the Office of Legal Affairs said that this Article stipulated that Parties should use the dispute settlement procedures under the Agreement before availing themselves of any rights which they had under the GATT. It was thus recognized in the provision that there might not be invocable rights under the GATT; this would apply in the case of a dispute involving a country which, like Botswana, was neither a GATT contracting party nor had provisionally acceded to the GATT.

9. The Committee took note of the statements made. It agreed to the terms of accession of Botswana as set out in the annex to these minutes. It also agreed that, on the deposit by Botswana with the Director-General of an instrument of accession stating its acceptance of the Agreement and, in addition, reproducing the terms set out in the annex to these minutes, the requirements of Article 22.3 would have been met. It further agreed that the terms reflect the particular circumstances of Botswana, that agreement of the Parties to them would not be regarded as a precedent for other Agreements and other governments, and that each future case should be treated on its own merits in the context of each particular Agreement. In addition, the Committee took note of the information reproduced in paragraph 5 of VAL/W/22.

B. Technical assistance

10. The representative of Australia said that his country was currently holding a further development course in customs administration for customs officers from 15 developing countries in Asia, Africa and the Pacific. This course, which had been conducted annually for the last seventeen years, contained a segment on customs valuation. The course provided for a day's discussion of customs valuation generally and of the GATT Agreement in particular by all participants and also, for those participants so interested, a day in the valuation section of the central office of the Australian customs administration discussing particular problems with officers. The course then moved on to one of the major ports in Australia where the practical problems involved in the processing of entries were examined.

11. In his capacity as Chairman of the Technical Committee, this representative urged as many developing countries as possible to respond, if not fully then at least partially, to the questionnaire on technical assistance circulated by the Technical Committee. He further said that, in the light of certain informal discussions he had held in Brussels and a statement made by the representative of the European Communities at the last meeting of the Technical Committee, it seemed to him that there might be two types of technical assistance required by developing countries: the type of assistance required by those developing countries that were considering accepting the Agreement on the one hand; and the assistance required by those developing countries that had just accepted, or were just about to accept, the Agreement on the other. The first group of countries might benefit best from seminars or similar types of presentation, while the second group might benefit best from more practical types of assistance such as training courses, including courses to train training officers, from customs officers directly involved in valuation questions.

12. The representative of Spain stressed the interest of his authorities in technical cooperation. He recalled that Spain had an annual course on customs techniques in general, including customs valuation. He also said that two Spanish officials had participated in a course on customs valuation held in Mexico in June and July for participants from twenty Latin American countries.

13. The representative of the European Communities stressed the importance that the Community and its member States attached to technical assistance. They were putting as much effort into this activity as available resources

would allow. He referred to the seminar held for ASEAN countries at the end of 1982, the seminar held for LAIA countries in April 1983 and the bilateral contacts with Brazil on the same occasion. The Community was presently in the process of organizing a seminar for the CARICOM countries, which would take place early in 1984, and also a seminar for a number of countries in East Africa which would also take place in the first half of 1984. These seminars would last a week, and would deal with the contents of the new Agreement, and compare it with the Brussels Definition of Value. Participants, from the Commission and the member States, would include officials responsible for the day-to-day application of the Agreement in their respective countries. Turning to the activities of member States of the European Communities, he said that in Denmark a customs course for Asian and African officials had been held in August and September 1983; this course had included a substantial element on customs valuation. In addition, a seminar organized by the Foundation for International Development including a substantial element on valuation had been held in Berlin. He agreed that there was need for different types of technical assistance - not only theoretical instruction but also direct practical attachments with the customs services of Parties of officials that would be responsible for the implementation of the Agreement in their respective countries. In this regard, he said that arrangements had been made for a number of Brazilian officials to spend some time with a number of the member States, so as to help them prepare the implementation of the Agreement in Brazil.

14. The representative of Finland said that the ninth annual training course in customs administration held by his country had taken place in August-October 1983. Of the 300 hours of instruction involved, some 40 hours had been devoted to customs valuation, focussing basically on the GATT Agreement but also including a comparison of it with the BDV. At the latest course, there had been fourteen participants from twelve Asian and African countries. The Finnish Customs Administration intended to continue this type of training; the next course was planned for autumn 1984.

15. The representative of Austria said that the most recent annual three-month training course held by his country had recently finished. The course had dealt with all aspects of customs administration, including both the GATT Agreement and the Brussels Definition of Value.

16. The representative of the United States said that a course on the GATT Valuation Agreement had been held on 9-18 August 1983 by the United States for nineteen participants from twelve Western hemisphere nations, as well as representatives from the Caribbean Community secretariat; the Customs Co-operation Council had also been represented. Three seminars were being tentatively planned for 1984 - in Jamaica, the Republic of Korea and Malaysia (for the ASEAN countries). It was intended that these would attempt to take into account the specific needs of the countries concerned.

17. The observer from the Customs Co-operation Council said that the Customs Co-operation Council at its session in June 1983 had approved the CCC Secretariat pursuing a comparative study of the GATT Valuation Agreement and the Brussels Definition of Value. The study was in its final stages and was expected to be made available shortly. He recalled that this was a form of technical assistance in which many developing countries had expressed a particular interest.

18. The Committee took note of the statements made, and, since this is a permanent agenda item, agreed to maintain this item on the agenda of its next meeting.

C. Information on implementation and administration of the Agreement

(i) Australia

19. The Committee examined the Australian legislation and replies to the checklist of issues, contained in documents VAL/1/Add.14 and VAL/2/Rev.1/Add.12 respectively.

20. Introducing the legislation of his country, the representative of Australia said that his delegation believed that the consideration of precise legal drafting, which often varied from country to country because of different legal drafting conventions, judicial precedents, etc., might be at times of lesser importance than a consideration of the actual effects of the legislation under examination. In this regard, he gave statistics for the use in Australia of the different valuation methods under the Agreement during the five months ending August 1983 that his customs administration had taken from its customs computer. Expressed as value percentages of total customs value for that period, the figures were as follows: Article 1, 99 per cent; Article 5, 0.3 per cent, Article 7, 0.7 per cent. The figures for Articles 2, 3, and 6 were too small to make any record. In terms of the percentages of relevant transactions, it was estimated that 96.5 per cent of all customs import transactions had been valued under Article 1, 0.1 per cent under Article 2, 1.3 per cent under Article 5, 0.1 per cent under Article 6 and 2 per cent under Article 7. Referring to the passage of the legislation through the Australian legislature, he recalled that Australia had a parliament in which in recent times the Government had not always been certain of a majority in the upper house, the Senate. The fact that the valuation legislation had passed both houses with a minimum of debate had been due in no small way to the experience of the parliamentary counsel who had drafted the legislation in the form which he did. He added that it had also to be recognised that, at least in some areas, the Valuation Agreement was less than precise for the purposes of practical application. Further, in drafting its current legislation, Australia had learnt from its experience with applying the Brussels Definition of Value in respect of which there had been considerable disagreement over interpretation. Thus, the aim of the present legislation was to give as much certainty as possible to importers and customs officers, even though the net result might be a fairly long and complicated document.

21. In response to a request from the representative of the United States to clarify the status under the Australian legislation of the interpretative notes to the Valuation Agreement, the representative of Australia said that the interpretative notes were clearly part of the Agreement as provided for in its Article 14. Where appropriate and as indicated in Australia's response to question 13 of the Checklist, interpretative notes which had a direct bearing had been incorporated in Australia's legislation. Other notes which had more of an illustrative nature were or would be the subject of administrative instructions.

22. The representative of the European Communities said that his delegation had found it difficult to follow the Australian legislation. Nevertheless, it had noted a number of apparent departures from the text of the Agreement. It could not be foreseen whether problems would arise as a result of the use of different terminology in the Australian legislation and certain apparent changes to the Agreement. It would only be possible to see whether the terms of the Agreement were being respected on the basis of its practical application by Australia.

23. The representative of the European Communities said that it appeared from the Australian legislation that values under Article 7 of the Agreement were set as the Comptroller determined, without any of the legal obligations set out in Article 7 of the Agreement. He asked how the safeguards written into Article 7 of the Agreement were provided for. In response, the representative of Australia said that when parliamentary counsel had adopted this formulation (Section 157.(8) of the Act), he had described the whole scheme of Australian legislation as a series of legal discretions. He had further referred to a landmark decision of the High Court of Australia of some 40 years ago that had stood the test of time as a legal precedent, which had in part stated that a discretion was not to be exercised arbitrarily or capriciously but for the purposes of attaining the object and meaning and for securing the purpose of the legislation. The representative of Australia said that there was no doubt that the purpose of the Australian customs valuation legislation was to give effect to the Agreement on Implementation of Article VII of the General Agreement. The Comptroller, in exercising the discretion given by Article 157.(8), was bound by that decision of the High Court. The specific words in the Agreement were in this respect highly important. He added, in this respect, that the Agreement had been widely circulated in Australia and formed part of the Australian customs valuation guide. An administrative instruction on Section 157.(8) had been issued; it was now in the process of revision in the light of the most recent discussion in the Technical Committee, so that it would clearly provide that the valuation methods to be adopted in applying the discretion in Section 157.(8) would be a flexible interpretation of Articles 1-6 and, if that did not produce a customs value, reference should be made to any other valuation method consistent with Article VII of the General Agreement but excluding those methods prohibited in Article 7 of the Agreement, as indicated in Section 157.(9) of the Australian legislation.

24. The representative of the European Communities asked why the phrase "in accordance with the contract" had been used instead of the term "as a condition of sale" which appeared in the Agreement in several places. The representative of Australia said that legal advice obtained during the drafting of the legislation had been that the terms were in fact the same. Australia had chosen the words "in accordance with the contract" on the grounds that a condition of sale had to be a legally enforceable condition, and to be such had to be embodied in the contract of sale. In practical effect there was no difference between the two terms.

25. The representative of Spain noted that in Section 158.(6)(b) three different time standards for test values had been defined even though there was nothing precise on this matter in the Agreement. He asked for information on the reasons for the choice of these time standards. In response, the representative of Australia said that Australia had noted the

lack of precision in Article 1.2(b) of the Agreement on this point and had come to the conclusion that a time standard ought to be prescribed so as to remove any uncertainties for traders or customs officers. The aim in formulating the time standards had been to ensure that a customs value selected for the purposes of Article 1.2(b) should have resulted from circumstances similar to those to the goods being valued. For Article 1.2(b)(i), the time standard in the Australian legislation was that the goods be exported at or about the same time as the goods to be valued - this was seen as consistent with Articles 2 and 3. For Article 1.2(b)(ii), the requirement was that the goods be sold in Australia at or about the same time as the goods to be valued - consistently with Article 5. For the test under Article 1.2(b)(iii), the time standard was that the goods be imported into Australia at or about the same time as the goods to be valued. He said that this last time standard had been chosen because, although it might be more consistent with Article 6 if it were required that the goods be produced at or about the same time as the goods to be valued, it was considered that most importers might have great difficulty in establishing that time of production. He believed that this standard provided more simplicity and certainty for importers without introducing a significant degree of distortion. Furthermore, it relied on information available in the country of importation.

26. The representative of the European Communities wondered what was the reason for the special treatment of inland freight in respect of goods exported from Canada in Section 154.(3) of the Australian legislation and how this could be justified in terms of GATT Article I. He expressed the Community's concern about what appeared to be a discriminatory provision that could be unfair to Community exporters. In response, the representative of Australia first noted that the basis of application of the Agreement by Australia was best described as ex-factory with the addition of inland freight in some circumstances. As regards the treatment of inland freight in Canada, this was a provision carried forward from earlier valuation legislation. It had been in the Customs Act for a very long time and had resulted from a bilateral trade agreement with Canada that had been entered into prior to the formulation and adoption of the General Agreement. As such, it was considered to have been "grandfathered". The representative of the European Communities said that the Protocol of Provisional Application - the "Grandfather Clause" - had been designed to provide cover for certain practices inconsistent with the GATT that were supposed to be phased out over time. One of the best opportunities for doing this was at the time of the introduction of new legislation. He continued to have doubts about this provision of the Australian legislation and reserved his right to come back to it in more detail if necessary.

27. The representative of the United States said that, under Sections 158.(5)(b) and 158.(6) dealing with transactions between related parties, there appeared to be a subtle shift of the burden of proof away from customs and onto the importer. The representative of Australia said that under Sections 158.(5) and 158.(6), if the Comptroller was satisfied that the purchaser and vendor were related and furthermore he had grounds for believing that the price had been influenced by their relationship, he would advise the importer of that view and of the reasons for forming it, and invite the importer to respond. If the importer could satisfy him that there had been no influence, then the transaction value would stand.

Australia considered that the provision of such satisfaction was the responsibility of the importer. He was the only person with access to relevant evidence. Such a position was in accordance with the third sentence of Article 1.2(a). If customs formed the view that the price had been influenced by the relationship, it was both unintended and unreasonable that customs should search out the rebuttal evidence. In response to a supplementary question, he said that it could be inferred from the statistics that he had quoted on the use in Australia of the various valuation methods under the Agreement (paragraph 20 above) that importers were generally having no difficulty in satisfying the Comptroller that prices had not been influenced by relationships between related parties.

28. The representative of the United States asked whether the phrase "other goods" in Sections 159.(3)(c)(i) and (ii) had the same meaning as the phrase "similar items" in Article 8.1(b) of the Agreement. The representative of Australia confirmed that the two terms had the same meaning and effect. The term "similar goods" had not been used so as to avoid confusion with the use of the same term in those parts of the legislation giving effect to the Agreement's provisions on identical and similar goods. In Section 159.(3)(c)(ii), tools, dies and moulds were aids to manufacture. The term "similar items" should be interpreted to cover other such aids. Hence the use of the formulation in that provision of the Australian legislation. He added that he found it difficult to conceive in practice of "other goods" that were not covered by the reference to tools, dies and moulds.

29. The representative of the European Communities said that Section 159.(3)(d) of the Australian legislation appeared to create a new category of assists - assists supplied for the production of assists. Such assists were not in his view provided for in Article 8 of the Agreement, which specified that no additions should be made to the price actually paid or payable except as provided for in that Article. In response, the representative of Australia noted that Article 8.1(b) referred to the value of certain goods and services. Australia believed that such a value must include all the relevant elements. If assists were supplied as part of the creation of a "primary" assist, their costs were a true part of the value of such an assist and, if the circumstances were appropriate, should be added to the price in order to arrive at the transaction value. In his view, the provisions of Section 159.(3)(d) did not go beyond those of Article 8.1(b). He believed that no additional element to be added to the price was being introduced; the content and purpose of Article 8.1(b) was being merely clarified. The representative of the European Community reserved his right to come back to this point at a later stage. He felt that the Australian legislation in this regard incorporated a very wide interpretation of the Agreement. He said that the drafters of the Agreement had been concerned to produce in Article 8 a definitive list of all the elements that could be added to the price. The representative of the United States said that her delegation had had a similar question on Section 159.(3)(d). The United States also wished to give the Australian response further consideration.

30. The representative of the United States noted that Section 161A.(1) indicated that computed value applied to goods only if the producer was the exporter of the goods. It appeared that there was no provision in the

legislation for permitting the use of computed value if the exporter was not the producer of the goods. She asked the Australian delegation what was the authority for this provision and, if computed value was not to be used where the exporter was not the producer, what valuation method would be used in such cases. The representative of Australia said that, in looking at computed value in terms of Article 6, Australia had come to the view that in those cases where the producer was not the exporter of the goods it would be most unlikely that the cost of production information would be available to the importer. Secondly, it had been considered that, even assuming that the necessary information was available, the computed value method would provide, in cases where the producer was not the exporter and the goods had passed through several hands before being sold for export to Australia, distorted valuations that would not be indicative of the true customs value of the goods. Illustrating this point, he gave a hypothetical example of producer P in country X who had a cost of production of certain goods of 100 currency units; P sells those goods to a sole distributor A also in country X for 110 currency units; in turn A sells to B situated in country Y for 125 currency units; B then sells to an associated company in Australia for 125 currency units - his bought-in price; the transaction value based on that price is rejected because the price has been influenced by the relationship between the parties, and computed value is found the most appropriate method after working through the hierarchy of valuation methods. The representative of Australia said that in those circumstances valuation on the basis of the cost of production of 100 currency units plus the general expenses and profit usually incurred in the sale of the goods to Australia might not even give a valuation of 125 currency units - which was the influenced price. He suggested that this would be a result unintended by the Agreement. Australia thus considered that, where the producer was not the exporter, there was too great a risk of the computed value method giving an incorrect and unacceptable valuation. As to how customs would deal with a situation where, after working through the hierarchy of valuation methods, Article 6 was reached but the producer was not the exporter, he was of the view that it would then be necessary to apply Article 7. If, in applying Article 7 and once more working through the hierarchy of methods under the provisions of that Article, computed value was again reached, then the flexible approach would no doubt enable a full consideration of all the costs to be taken into account. The representative of the United States said that her delegation might like to come back to this point, in the light of further consideration of the Australian response.

31. Following the examination of the Australian legislation, the representative of Australia said that it might make future examinations of national legislation more fruitful and efficient if notice of questions could be supplied on a bilateral basis sufficiently in advance of the meeting to enable legal and other relevant experts to assist in the preparation of full and accurate answers.

(ii) South Africa

32. The Chairman recalled that the Committee had agreed (VAL/M/7, paragraph 14) to examine the South African legislation at its next meeting. He therefore suggested that to the extent possible countries wishing to raise questions on the South African legislation give South Africa written notice of them, either directly or through the secretariat, by mid-March 1984.

33. The representative of South Africa briefly introduced the South African legislation (VAL/1/Add.15) with a view to facilitating the examination of it by Parties prior to the Committee's next meeting. He said that the first seventeen Articles of the Agreement dealing with the rules on customs valuation were incorporated in Sections 65-67 of Chapter 9 of the South African Act, with certain texts slightly adapted to accord with South African legal terminology. He emphasised that the interpretation of the South African Act was subject to the Agreement, the Interpretative Notes thereto and the Advisory Opinions, Commentaries and Explanatory Notes issued under the Agreement, as indicated in Section 74A(i) of the Act. In order to assist locating the provisions of the Agreement in the South African legislation, the Reconciliation Table from the South African Customs Valuation Guide, which had been made available, indicated the provisions of the Act and the regulations thereto that corresponded to the various provisions of the Agreement. He said that before the Agreement had been implemented on 1 July 1983, a series of thirteen seminars had been conducted in all the major centres of South Africa to introduce the new valuation system. The seminars had been well attended by importers, clearing agents and other interested parties. Even at this early stage, it was evident that the new valuation system was far more acceptable to the importing community in South Africa than any previous system. He was convinced that the South African legislation was complete, clear and fully in accordance with the Agreement.

(iii) Canada

34. The representative of Canada informed the Committee of developments regarding the implementation of the Agreement by Canada. He said that the Canadian Tariff Board had submitted to the Canadian Government recommendations for adjustments in tariff rates to offset changes in tariff protection that would result from application of the Agreement. The Tariff Board Report, which had been made public on 22 August 1983, and the accompanying press release, which requested those who wished to comment on the Report to do so by mid-November, had been made available to members and observers of the Committee on Customs Valuation. Canada intended to notify shortly to the GATT, hopefully by the end of 1983, the tariff adjustments that Canada would wish to negotiate the acceptance of under the procedures of GATT Article XXVIII. Once agreement was reached on these changes, the Canadian Government intended to introduce in Parliament the customs valuation legislation that Parties had already had an opportunity to look at, so as to implement the Agreement by 1 January 1985.

35. The representative of the European Communities expressed concern about the small amount of time remaining for Canada to complete all the steps that had been referred to before the Agreement could be implemented. The Community was expecting Canada to meet its Tokyo Round undertaking to implement the Agreement on 1 January 1985, and would be looking for assurances in the coming weeks that Canada would be able to meet this timetable.

(iv) United States

36. The representative of the European Communities referred to draft amendments to United States customs regulations concerning the treatment of foreign inland freight costs that had been published in the United States

Federal Register in June 1983. As he understood it, it was proposed to exclude from customs value all documented foreign inland freight costs which occurred subsequent to the placing of the imported merchandise on the exporting carrier. The Community wished to ask what was meant by the "exporting carrier" - would this include containers and would the packing of goods into containers on the exporter's premises make them eligible to benefit from such a new provision? A number of Community exporters would wish this to be the case.

37. The representative of the United States noted that the text in question was not legislation, but a draft regulation. The draft had been published in the Federal Register to give interested parties an opportunity to comment. A number of comments on the aspect raised and on other aspects had been received. These, including the comments of the Communities, would be taken into account in considering the preparation of the final regulation on this matter.

D. Report by the Chairman of the Technical Committee

38. The Chairman of the Technical Committee said that the Report of the sixth session of the Technical Committee on Customs Valuation, which had taken place in Brussels on 12-16 September 1983, was contained in CCC document 30.480. All but two Parties to the Agreement had been represented, and there had been observers from twenty-eight countries. He mentioned first that, prior to the Technical Committee's meeting, the Customs Co-operation Council itself had taken note of the work done at the Technical Committee's fourth and fifth meetings; the instruments adopted at these meetings had thus been incorporated in the first amending supplement to the Valuation Agreement Compendium. In summarising the Technical Committee's work at its sixth session on the dissemination of information, he referred in particular to the decision taken in regard to the circulation of customs valuation rulings made by Parties to the Agreement. Using information to be communicated by Parties, the CCC Secretariat would issue a quarterly index of national rulings. Administrations interested in a particular ruling would be able to request the full text from the administration concerned. The Technical Committee believed that this procedure would facilitate uniform application of the provisions of the Agreement. In regard to technical assistance, he said that the Technical Committee had taken note of an updated summary of replies to the questionnaire, received from twenty-nine of the ninety or so countries to which it had been sent. The Technical Committee had urged countries which had not replied to do so, so that this agenda item could be concluded at the Technical Committee's next session, in the light of all the information then available. A number of delegations had reported on technical assistance programmes organized by their countries. Still on the subject of technical assistance, he said that an information note (CCC document 30.398) concerning false invoicing and mechanisms for the exchange of information to combat the use of false documents had been presented to the Technical Committee.

39. Continuing his report, the Chairman of the Technical Committee said that the Technical Committee had adopted seven texts:

- A Commentary on the Treatment of Split Shipments under Article 1 of the Agreement.

- A Commentary on the Treatment of Storage and Related Expenses under the Provisions of Article 1.
- An Advisory Opinion on the Treatment of Fraudulent Documents, stating that an administration could not be required to take account of a fraudulent declaration and that, if a document was found to be fraudulent subsequent to the determination of customs value, invalidation of that value was a matter for national legislation.
- An Advisory Opinion on the Hierarchical Order in Applying Article 7, specifying, in short, that where several acceptable methods could be used to determine customs value under Article 7, the hierarchy should be maintained.
- An Advisory Opinion on the Use of Data from Foreign Sources in Applying Article 7, specifying that the source of information was not in itself a bar to its use for the purposes of Article 7, provided that the information was available in the country of importation and Customs had been able to check its truth or accuracy.
- An Advisory Opinion on the Flexible Application of Article 7 of the Agreement, stating that, if customs value could not be determined by flexible application of the methods laid down in Articles 1 to 6, then as a final resort, other reasonable methods might be used, provided that they were not precluded by Article 7.2 and were consistent with the principles and general provisions of the Agreement and of Article VII of the GATT.
- An Advisory Opinion on the Scope of the Word "Insurance" under Article 8.2(c) of the Agreement, specifying that the word "insurance" should be interpreted as referring solely to the cost of insuring goods during the operations covered by Articles 8.2(a) and (b) of the Agreement.

40. The Chairman of the Technical Committee further said that other technical questions examined by the Technical Committee, on which no texts had yet been adopted but on which work in the Technical Committee was to continue, were the treatment of package deals; the treatment of confirming commission and del credere commission; the meaning of the term "at or about the same time" in Articles 2 and 3 of the Agreement; adjustment for difference in commercial level under Articles 2 and 3 of the Agreement; the practical application of Article 7 of the Agreement; and the terms used in Article 8.1(b)(iv). In regard to this last-mentioned point, he said that during the examination of the scope and meaning of those terms the Technical Committee had found that the word "development" might be misinterpreted in its practical application, because the English, French and Spanish texts were not strictly aligned. It had decided that the Committee on Customs Valuation should be informed of this problem on the basis of the explanation given in the first six paragraphs of CCC document 29.993, which read as follows:

"In respect of the term "development" in Article 8.1(b)(iv) it seems necessary to draw attention to a peculiarity in the wording of the English, French and Spanish texts.

"In the English text the word "development" appears, which leads one to recall an economic concept that is nowadays present in any industrial process. This concept, Research and Development, usually in its shortened form R & D, appears as a normal element of costings of the majority of large enterprises.

"The English wording of the Agreement seems to indicate that its authors intended that, in determining Customs value under the provisions of Article 1 and Article 8.1(b)(iv), there should be added to the price of imported goods the value of development D but not that of research R.

"However, the corresponding French text of the Agreement uses the terms "travaux d'étude" which, obviously, differs from the literal translation, which would be "développement".

"Furthermore, the Spanish text uses the term "creación y perfeccionamiento", the literal translation of which would be "creation and improvement" in English and "création et perfectionnement" in French."

41. In regard to consideration of future work, the Chairman of the Technical Committee said that the Technical Committee had considered a conspectus of technical valuation questions (CCC Secretariat document 29.992), Parts III and IV (other than question 2 in Part IV) of which could be regarded as the Technical Committee's programme of future work. Administrations had been invited to put forward for inclusion in that programme any relevant questions they would like the Technical Committee to examine. He said that, in addition to the subjects already mentioned, the following items had been placed on the agenda for the next session of the Technical Committee: treatment of costs incurred after importation; cost of activities undertaken by the buyer on his own account; treatment of inadvertent errors; incomplete documentation. Under other business, the Technical Committee had reaffirmed the conclusions reached at its third Session with respect to the question of the time standard for test values. (CCC document 28.560, paragraphs 327 to 345), in particular the need for the question to be resolved before practical difficulties were encountered. In conclusion, he said that from every point of view this had been a successful session, which had not only established machinery for the dissemination of national customs valuation rulings and adopted seven new instruments designed to secure uniform interpretation and application of the Agreement, but also had prepared the ground for productive sessions in the future.

42. The representative of Argentina said that, with reference to the Technical Committee's work on the scope of the word "insurance" under Article 8.2(a) and (b) of the Agreement, he wished to draw the attention of the Committee on Customs Valuation to the position of the Argentinian delegation recorded in paragraphs 205 and 208 of the Technical Committee's report (CCC document 30.480).

43. The representative of the European Communities expressed his appreciation for the work done by the Technical Committee at its sixth session. He considered that the question raised about linguistic inconsistency in regard to the word "development" was important, since it

was necessary to ensure that all three texts of the Agreement were in harmony as far as possible. In his view, it was open to the Committee to agree on an interpretation of the French and Spanish texts on this matter just as it had done in respect of the word "undertaken" in the English text. This would be a less complicated way of dealing with the question than attempting to modify the Agreement itself. He suggested that the GATT secretariat should be asked to give its views on the linguistic questions involved. In the light of this and the further work that was underway in the Technical Committee on the practical application of the provision in question, the Committee might come back to this matter at its next meeting with a view to reaching agreement on an interpretation.

44. The United States delegation expressed its support for this way of proceeding.

45. The representative of Spain said that his delegation wished to reserve its position on this matter until a later meeting of the Committee.

46. The Committee took note of the report of the Chairman of the Technical Committee and of the statements made. It agreed that the secretariat, after consulting with interested delegations, should draw up a note, which first would outline the nature of the linguistic issue, and secondly, if possible, put forward suggestions as to how the Committee might proceed on this matter. The Committee agreed to revert to this matter at its next meeting on the basis of the secretariat note.

E. Use of various valuation methods by Parties

47. The Chairman recalled that, following a discussion at the Committee's second meeting on this matter, a number of Parties had submitted information on the use in their countries of the various valuation methods provided for under the Agreement (VAL/W/5 and Addenda 1-8). Following exchanges of view at subsequent meetings on the desirability of collecting additional and more detailed information, including in regard to the volume of trade and the use by all Parties of an identical time period, the Committee had decided at its fifth meeting to request the Technical Committee to advise on methodologies for determining more precisely the use of the various valuation methods by Parties (VAL/M/5, paragraphs 19-22). The report of the Technical Committee, which had been drawn up at the Technical Committee's fifth meeting, held on 7-11 March 1983, was in document VAL/W/17. At its last meeting, the Committee had had an initial discussion on the basis of this report (VAL/M/7, paragraphs 18-21) addressing both the methodology and timing of a new data collection exercise, and had agreed to revert to the question at the present meeting.

48. The representative of Austria said that his country had conducted statistical exercises to determine the use of the different valuation methods under the Agreement in Austria in 1981 and 1982. The results were:

<u>Valuation method</u>	<u>Percentages</u>	
	<u>1981</u>	<u>1982</u>
Article 1	87	86
Article 2	2	2
Article 3	1	1
Article 5	-	-
Article 6	-	-
Article 7	10	11

49. Following a discussion focussing in particular on questions of timing, the Chairman noted that, while there was general agreement on the value of a new data collection exercise, there was also a general view that a new exercise should not be initiated before additional countries were applying the Agreement. He therefore suggested that the Committee might not need to pursue its discussion on this matter for the time being and should agree to revert to this matter at an appropriate future meeting.

50. It was so agreed.

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

51. The Chairman noted that the Committee had before it the revised proposal on computer software presented by the United States in document VAL/W/14/Rev.1 and a further revision of the European Communities' proposal on the treatment of interest charges for deferred payment, document VAL/W/13/Rev.2 which had been circulated that morning.

52. The representative of Australia said that the Australian Industries Assistance Commission (IAC) had been for some time conducting a review of the Australian computer hardware and software industries. The IAC had now published a draft report of its preliminary findings. A public hearing would be conducted on 30 November 1983 to enable interested parties to react to the draft recommendations. In the light of those reactions the IAC would finalize its report for presentation to the Australian Government early in February 1984. Until the Australian Government had reached a decision on the basis of the report, Australia would not be in a position to indicate its position on the proposal on computer software. He said, however, that it might be of some interest to note that the IAC's draft recommendations were that the carrier medium should bear a rate of duty considered appropriate for industry assistance purposes, but that the recorded software data should be free of duty. Of course, the Australian Government might chose to consider other ways of providing the assistance that it deemed appropriate.

53. The representative of Hungary said that her delegation could accept the United States proposal on the valuation of computer software.

54. The representative of Switzerland said that his delegation's position on the substance and legal aspects of the question under discussion as reflected in VAL/M/7 remained unchanged. In regard to the new revised proposal of the European Communities on interest charges, his preliminary reaction was that it should cause no major difficulties. His delegation would examine it carefully. As to the United States proposal on computer software, he requested the United States to provide informally in due course examples of some of the products that would fall under the first substantive paragraph of the draft decision and under the expression "similar devices" in the second paragraph. He also asked whether the expression "such circuits" in line 3 of the second paragraph referred to both integrated circuits and semi-conductors. In addition, he wondered whether the words of the text that followed should not read "or similar devices".

55. The representative of India drew attention to the position of his delegation on the two proposals as recorded in the minutes of the

Committee's recent meetings. Referring to the proposal of the European Communities on interest charges for deferred payment, he recalled that his delegation had indicated at previous meetings that it could accept the thrust of the proposal, but that this view on substance was without prejudice to his delegation's views on some of the legal aspects involved. His delegation had not been able to clear some of its doubts on these aspects since the last meeting. He said that his delegation would need greater clarification of the legal implications of the procedures contemplated before it would take a final position. In regard to the most recent revision of the European Communities' proposal, he said that his delegation had not had time to study it, and reserved its right to revert to it at a future meeting of the Committee. In conclusion, he stressed the need for further informal consultations on the two proposals under this agenda item in the period between the present and the next meeting of the Committee.

56. The representative of the European Communities said that his delegation had put forward its new revised proposal on interest charges (VAL/W/13/Rev.2) with the aim of solving certain of the problems raised by the Brazilian delegation. He hoped that there would be agreement on the proposal at the next meeting of the Committee. Referring to the comments of the Indian delegation on the legal and procedural issues, he said that he hoped that each of the proposals under this agenda item would be examined independently and on its merits, and that the view would be taken that the proposal on interest charges was an acceptable interpretation of the Agreement.

57. The representative of India said that the two proposals would be examined by his authorities independently and on their merits, as had been the case so far. He also said that he had noted the remarks that the new revision of the proposal on interest charges did not change the substance of the proposal but merely sought to clarify certain points.

58. The representative of Romania said that his delegation could support the proposal of the European Communities on the treatment of interest charges. In regard to computer software, his delegation, generally speaking, had no strong difficulties with accepting the proposal of the United States. His delegation could join a consensus on this matter in the Committee.

59. The representative of Australia, referring to the proposal on interest charges in VAL/W/13/Rev.2, said that his delegation had always supported the thrust of the proposal. His delegation considered that Article 1.1 which referred to "the price actually paid or payable for the goods" made it clear that interest charges incurred by the purchaser in respect of the financing of the goods could not be included in the customs value since they were not part of the payment made to the seller "for the goods" - whether the interest charges were paid to the seller as vendor finance or to a third party. While the language in the draft decision in VAL/W/13/Rev.2 was generally acceptable, he suggested that it might be further clarified by inserting, after the words "financing arrangement" in the first line of the substantive part of the draft decision, the words "entered into by the purchaser and ..." This would make it clear that interest charges entered into by the seller - for example in financing the construction of his factory in which the goods were made - could not be

deducted from customs value. Since, for the reason he had given, the Community proposal was in the view of his delegation only a clarification of the Agreement, his delegation believed that a Committee decision would be sufficient to give effect to it.

60. The representative of the European Communities said that his delegation could accept the amendment to VAL/W/13/Rev.2 proposed by Australia, and suggested that delegations regard the proposal of the European Communities as thus amended.

61. The representative of South Africa said that his delegation agreed with the delegation of Australia in regard to the interpretation of Article 1.1 of the Agreement in respect of the treatment of interest charges for deferred payment. Interest was not paid "for the goods", but for a financial accommodation relating to the sale of the goods. His delegation could, therefore, support the Community proposal in VAL/W/13/Rev.2, including the use of a Committee decision to give effect to it. In regard to computer software, he said that his delegation could in principle support the United States proposal.

62. The representative of Canada said that his delegation supported the broad lines of the Community's proposal on interest charges. He doubted that the changes in the new revised version would cause his delegation difficulties. On the procedural questions, he expressed his support for the views of the Australian and South African delegations.

63. The representative of Finland said that the Nordic countries would examine the new revised Community proposal on interest charges. In regard to the second element in point (c) of the draft decision, he wondered as a first reaction whether customs officers would have difficulty in determining whether an interest rate was really the prevailing rate in the country where and at the time when the finance had been provided.

64. The representative of Brazil said that her authorities would examine the substance of the new revised proposal of the European Communities on the treatment of interest charges. In regard to computer software, she said that her delegation continued to oppose the substance of the United States proposal and that the Brazilian position on the procedural aspects remained unchanged.

65. The representative of the European Communities said that his delegation was concerned about the question of computer software because, while on the one hand practical difficulties were arising to which a solution was urgent, there seemed on the other hand little prospect of a consensus in the Committee on the United States proposal. The Commission of the European Communities, with the agreement of a number of delegations, was therefore putting forward an alternative draft decision, that would be circulated shortly.¹ The new approach would accept that, under the Agreement, computer software might be considered to be includible in customs value. It would thus not involve any new interpretation of the Agreement. The new approach would then recognise that there had been an unforeseen and unintended change in practice in relation to previous international rules, which had resulted in an increase in customs charges in certain cases and created practical difficulties for customs clearance.

¹ Issued as document VAL/Spec/8.

This was not in conformity with the spirit with which the Agreement had been negotiated. It was therefore suggested that the approach adopted in the management of the Brussels Definition of Value might be adopted - that computer software should be recognized as an exceptional case requiring exceptional treatment. Under the proposal the Committee would thus decide that those Parties able to do so could value computer software in the way set out in the United States proposal. It would also decide that this solution would be adopted on a provisional basis that would not rule out any satisfactory long term solution. In order to make customs treatment predictable for traders, those countries able to accept and apply the decision would indicate this to the GATT. Summarising the advantages of this approach, he said that Parties would not be obliged to commit themselves to an interpretation of the Agreement that they might find difficult to accept; there would be a transparent Committee decision consistent with the objectives and spirit of the Agreement; the arrangement would not be binding on those Parties unable to accept it; it would be adopted on a provisional basis; and it would not constitute a precedent that could lead to difficulties in other Codes.

66. A number of delegations raised questions as to the status of this new proposal and its relationship to the existing United States proposal in VAL/W/14/Rev.1.

67. The representative of the European Communities suggested that further informal consultations might first consider whether there was any possibility of consensus on the United States proposal. If not, they could then address the new approach that he had put forward.

68. The representative of the United States said that the proposal of her delegation in VAL/W/14/Rev.1 remained on the table. However, her delegation was prepared to examine the new approach that had been suggested with a view to finding a solution to the problem of computer software.

69. The Committee agreed that further informal consultations among interested Parties should be held on the various proposals before it in relation to computer software and interest charges for deferred payment, and that it would revert to these matters at its next meeting.

G. Time standard for test values under Article 1.2(b) of the Agreement

70. The Chairman recalled that, at the fourth meeting of the Committee, the Chairman of the Technical Committee had reported 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 in consequence internal legislation was not uniform. He had 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 (VAL/M/4, paragraph 29).

71. To facilitate consideration of this matter, document VAL/W/18 outlined the discussions that had taken place on this matter in the Technical Committee.

72. The representative of Canada said that his delegation now took the view that uniformity of interpretation in this specific case was not essential, and could go along with the approach of the Technical Committee indicated in the last paragraph of document VAL/W/18.

73. The Committee decided to request the Technical Committee to pursue the formulation of an agreed text along the lines of that indicated in the report of the third session of the Technical Committee. The Committee noted that it would have the opportunity to examine the resulting text in the context of the regular reports of the Technical Committee.

H. Annual review of the implementation and operation of the Agreement

74. The Committee conducted its third annual review of the implementation and operation of the Agreement, as stipulated in its Article 26. For this purpose, the Committee had before it a background document prepared by the secretariat (VAL/W/21).

75. Referring to section 14 of VAL/W/21, the representative of Romania said that the two Romanian experts made available for panel work in 1981 and 1982 were also confirmed for 1983. He suggested that if a Party had not indicated at the beginning of a year any change in persons previously nominated as available to serve on panels, then those persons should be regarded as reconfirmed.

76. The Committee decided that, in the light of its review and of the work at its meeting as a whole, the secretariat should circulate a revised version of VAL/W/21, embodying the results of its review.

I. Other business
Dates and draft agendas of next meeting

77. The Committee agreed to hold its next meeting on 26-27 April 1984, and to set aside tentatively 8-9 November 1984 for its second meeting in 1984.

78. The Committee agreed that the draft agenda of its next meeting would include the following items:

- A. Accession of further countries to the Agreement
- B. Technical assistance
- C. Information on implementation and administration of the Agreement
- D. Report on the work of the Technical Committee
- E. Linguistic consistency of the term "development" in Article 8.1(b)(iv)
- F. Treatment of interest for deferred payment; valuation of computer software
- G. Other business, including panelists and dates and draft agendas of next meetings.

ANNEX

TERMS OF ACCESSION OF BOTSWANA
TO THE AGREEMENT ON CUSTOMS VALUATION

Declaration to be Included in
Botswana's Instrument of Accession

Upon accepting the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade in accordance with Article 22.3 of that Agreement, the Government of Botswana declares that, until any such time that it might become a contracting party to the GATT, it will continue to apply de facto the General Agreement on Tariffs and Trade, and in particular Articles I and VII thereof, in its trade with all the Parties to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade to the extent necessary to ensure that advantages which accrue directly or indirectly under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade are not nullified or impaired, on the understanding that the Parties to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade will equally apply de facto the General Agreement on Tariffs and Trade in their trade with Botswana.

The Government of Botswana declares its readiness to examine in the Committee on Customs Valuation any difficulty or matter that may arise related to the application of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade between Botswana and another Party.