

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/Spec/12
10 October 1984

Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING HELD ON 24 SEPTEMBER 1984

Chairman: Mr. J.-C. Renoue

1. The Committee on Customs Valuation held its tenth meeting on 24 September 1984.

2. The following agenda was adopted:

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A. Accession of further countries to the Agreement

3. The Chairman said that he was pleased to inform the Committee that the Director-General had received on 13 August 1984 an instrument of accession from the Botswana Government, by which Botswana had acceded to the Agreement on the terms agreed by the Committee at its meeting of November 1983 (VAL/M/8, paragraph 9). Botswana had not invoked any of the special provisions available to developing countries in the Agreement. The Agreement had entered into force for Botswana on 12 September 1984. He welcomed Botswana as a Party to the Agreement and member of the Committee, and noted that Botswana was the first country which was neither a contracting party nor provisionally acceded to the GATT to accede to any of the non-tariff measure Codes. The Chairman said that he was also pleased to inform the Committee that on 28 May 1984 the Government of Czechoslovakia, which had signed the Agreement on 2 April 1984, had deposited an instrument of ratification. The Agreement had accordingly entered into force for Czechoslovakia on 27 June 1984.

4. The Committee noted with satisfaction the statement of the Chair.

B. Valuation of computer software

5. The Chairman said that it was his understanding that there was now a consensus in the Committee in favour of the proposals contained in VAL/W/14/Rev.2 which had been the subject of extensive informal consultations. He noted that under the proposal the Chairman would first make the statement in Part I of that document outlining the "unique situation" of computer software and the background to the proposed decision. He therefore made the following statement:

"In the case of imported carrier media bearing data or instructions for use in data processing equipment (software), it is essentially the carrier media itself, e.g. the tape or the magnetic disc, which is liable to duty under the customs tariff. However, the importer is, in fact, interested in using the instructions or data; the carrier medium is incidental. Indeed, if the technical facilities are available to the parties to the transaction, the software can be transmitted by wire or satellite, in which case the question of customs duties does not arise. In addition, the carrier medium is usually a temporary means of storing the instructions or data; in order to use it, the buyer has to transfer or reproduce the data or instructions into the memory or data base of his own system.

"Under the international customs valuation practices which were superseded by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement), the value of the software was not, as a general rule, included when valuing the carrier medium. Following their adoption of the Agreement, those countries which followed the previous international practice have either changed their rules for valuing carrier media bearing computer software or have maintained their previous practice.

"The proposed decision of the Committee on Customs Valuation on the valuation of carrier media bearing software for data processing equipment indicates that transaction value is the primary basis of valuation under the Agreement and that its application with regard to software recorded on carrier media for data processing equipment is fully consistent with the Agreement. It also would provide that given the "unique situation" regarding software just described and the fact that some Parties sought a different approach, it would also be consistent with the Agreement for those Parties which wish to do so to only take account of the cost or value of the carrier medium itself in determining the customs value of imported carrier media bearing data or instructions.

"In taking this decision on the valuation of carrier media bearing software for data processing equipment, it is understood that should any difficulties arise in the implementation and application of the decision, it would be useful for those difficulties to be considered by the Parties to the Agreement."

6. The Chairman then proposed the adoption of the draft decision contained in Part II of document VAL/W/14/Rev.2, with the following linguistic change to the French text in order to bring it into line with the English and Spanish texts: the last clause of paragraph 2 should be amended to read "l'expression 'données ou instructions' ne s'entend ni des enregistrements du son, ni des enregistrements cinématographiques, ni des enregistrements vidéos".

7. The Committee adopted the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment proposed in Part II of document VAL/W/14/Rev.2, amended, in its French version, as proposed by the Chairman (subsequently issued as document VAL/8).

8. Following the adoption of the Decision, a number of delegations made statements.

9. The representative of Canada said that his delegation supported the Decision. His delegation understood the Decision to be a non-binding agreement between accepting countries.

10. The representative of Argentina said that his delegation believed that the primary method of valuation under the Agreement was that of transaction value, as was indeed reaffirmed in paragraph 1 of the Decision. His delegation wished to reiterate that it did not favour providing for the possibility of applying the Agreement in two different ways and allowing each Party to choose which way it considered to be in its interests. Nevertheless, his delegation had not put any obstacle in the way of the adoption of the Decision by the Committee. The Decision did not represent a precedent in any way for future discussions in the Committee.

11. The representative of Brazil said that his delegation's acceptance of the draft decision on the valuation of computer software as proposed by the United States in document VAL/W/14/Rev.2 revealed a considerable effort on the part of his authorities which, as signatories were well aware, had come quite a long way from their initial position of opposition to the adoption of any decision on the matter in order to co-operate on the negotiation of a text. His delegation reaffirmed that the fundamental principle for valuation in the Code was that of transaction value and that this Decision constituted an exception to the Code's rules. Furthermore, he said that his delegation had only accepted the convening of a special meeting of the Committee in order not to break a consensus on its taking place; his delegation had not seen any justification for considering document VAL/W/14/Rev.2 before the next regular Committee meeting. Lastly, he wished to put on record his delegation's understanding that the present decision on software and the procedure of convening a meeting of the Committee on an urgency basis would not under any circumstances constitute a precedent for any new initiatives aimed at an alteration of either the letter or the spirit of the Customs Valuation Code.

12. The representative of Norway said that Norway applied a specific customs duty to tape and magnetic discs, which were the main carrier media covered by the Decision. The Decision would not therefore change Norway's practices regarding customs duty. However, customs values were also employed as a basis for internal taxes. In this connection, Norway had decided to apply paragraph 1 of the Decision, implying that Norway would use the transaction value calculated in accordance with Article 1 of the Agreement as the basis for internal taxes.

13. The representative of India said that he wished to endorse the statements made by the representatives of Argentina and Brazil and reaffirmed the position of his delegation that transaction value was the primary method of valuation under the Agreement. He recalled that the views of his delegation had been clearly set out in the minutes of the previous meetings. It was his delegation's understanding that countries applying the method set out in paragraph 2 of the Decision would, in accordance with the provisions of paragraph 4, apply this on an m.f.n. basis to those signatories who would continue to apply the transaction value system embodied in the Code. This Decision could not constitute a precedent in any form.

14. The representative of the United States thanked delegations for their co-operation in the formulation of the Decision. She expressed the hope

that as many Parties as possible would apply the practice referred to in paragraph 2 of the Decision.

C. Decision on Treatment of Interest Charges in the Customs Value of Imported Goods: suggested rectification

15. The Chairman recalled that, at its last meeting, the Committee had adopted a Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods (VAL/6). Since that time, the delegation of the European Communities had drawn the attention of the Committee in document VAL/Spec/11 to what it considered to be a linguistic discrepancy between the English text of the Decision, on the one hand, and the French and Spanish texts on the other, and had suggested rectifications to the French and Spanish texts of the Decision. It had been proposed in document VAL/Spec/11 that the matter be dealt with by a procedure of tacit approval unless a member indicated by 10 August 1984 difficulty with accepting the suggested rectification or with dealing with the matter as a simple question of rectification. Since a Party had indicated a need for further time to consider the proposed rectification, the matter had been put on the agenda of the present meeting to see whether the Committee could now deal with it.

16. The Chairman asked the Committee whether it would accept the rectification proposed in paragraph 3 of VAL/Spec/11, it being understood that the Committee was being asked to pronounce on this paragraph of that document only, and not on its other paragraphs.

17. The Committee agreed to the rectification proposed in paragraph 3 of VAL/Spec/11. (The Decision, as rectified, has been issued as document VAL/6/Rev.1.)

18. The Chairman noted that if any problem of a substantive nature were to arise in the implementation of the Decision, the Committee could, of course, examine the problem and, if necessary, seek the advice of the Technical Committee.