

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/Spec/21
28 May 1986

Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING HELD ON 30 APRIL 1986

Chairman: Mr. P. Nicora (France)

1. The Committee elected Mr. P. Nicora (France) Chairman and Mr. Dong-Bai Kim (Republic of Korea) Vice-Chairman.
2. The Chairman informed the Committee of a communication he had received from the Permanent Representative of Hong Kong (to be issued as document VAL/23).

3. The following agenda was adopted:

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A. Accession of further countries to the Agreement

(a) Turkey

4. The Committee welcomed Turkey, which had signed the Agreement subject to ratification on 5 February 1986, as a signatory.

5. The representative of Turkey said that, under his country's constitution, the Agreement had to be approved by Parliament before it could be ratified. The Agreement had been submitted to Parliament where deliberations on it had begun earlier in April 1986. It was not possible to foresee exactly when Parliament would have finished its consideration but he was hopeful that ratification would take place shortly.

(b) Lesotho

6. The Committee agreed to the terms of accession for Lesotho under Article 22.3 of the Agreement contained in the annex to document VAL/W/37. The Committee further agreed that the terms reflected the particular circumstances of Lesotho, 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.

(c) Other matters relating to accession

7. The representative of Argentina informed the Committee of progress towards the ratification of the Agreement by Argentina. As of 17 April 1986, the lower house of the Argentinian Congress, convened in special session at the request of the President, had approved the Agreement unanimously. Since the upper house had already approved the Agreement, it had now been approved by Congress.

B. Enlargement of the European Communities

8. The Chairman recalled that at its meeting of 23 January 1986 the Committee had asked the Legal Office of the secretariat to look at the question of the status of Spain and Portugal in the Agreement after the enlargement of the EEC (VAL/M/16, paragraph 6).

9. The representative of the secretariat said that the Legal Office had given the following opinion:

"Article 28 of the Agreement on Implementation of Article VII of the GATT declares that any Party may withdraw from the Agreement and that the withdrawal shall take effect upon expiration of sixty days from the date on which written notice of withdrawal is received by the Director-General of GATT. Spain and Portugal communicated orally to the Committee on Customs Valuation their decision to cease to be "individual members of the Agreement" as of 1 January 1986; they have not communicated in writing to the Director-General of GATT their intention to withdraw from the Agreement. The procedural requirements of Article 28 not having been met, Spain and Portugal are still Parties to the Agreement on Customs Valuation in their own right."

"That the Agreement on Implementation of Article VII of the GATT applies to Spain and Portugal by virtue of their membership of the EEC is not being questioned. The Agreement therefore applies to Portugal and Spain by virtue of both their EEC membership and their individual

acceptance of the Agreement. If Portugal and Spain wish to be bound by the Agreement only through their membership of the EEC and not as individual Parties, they would need to communicate their intention to withdraw in accordance with Article 28 of the Agreement."

10. The representative of the European Communities said that he had no dispute with the opinion of the secretariat Legal Office. His delegation had contacted Spain and Portugal about the necessary procedures.

11. The Committee took note of the statements made.

C. Technical assistance

12. The Committee had before it documents VAL/W/29/Rev.1 and Add.1, reproducing the most recent CCC Technical Committee documents summarizing technical assistance activities.

13. The representative of Australia, with reference to the last sentence of VAL/W/29/Rev.1/Add.1, said that Australia still offered technical assistance to developing countries, in the form of consultancy services, attachment of overseas customs officials to the Australian customs service, in situ training, and through the provision of training resource material. A fuller description could be provided to interested delegations.

14. The observer from the Customs Cooperation Council said that the CCC would make available, at the request of the Turkish customs, an official of the CCC Secretariat to help train customs officials in Turkey to apply the Agreement.

15. The Committee took note of the statements made.

D. Report on the work of the Technical Committee

16. The Chairman of the Technical Committee on Customs Valuation, Mr. Haaland (Norway), reported on the eleventh session of the Technical Committee, held 3-7 March 1986, the full report of which is in CCC document 33.180. In regard to the dissemination of information, he said that the Technical Committee had taken note of CCC document 33.077 containing new valuation rulings furnished by the European Economic Community, Finland, New Zealand, South Africa and the United States. The CCC Secretariat would update the Index of these rulings in the Compendium once every two years or whenever the amount of information necessitated earlier updating. In the meantime, new rulings would be published in a separate document to be distributed before each session of the Committee. On technical assistance, the Technical Committee had taken note of the CCC document 32.848 which contained additional information relating to technical assistance and of further information given by Australia, the EEC, New Zealand and the International Chamber of Commerce. The Committee was also given details of the fourth CCC training course which had been organized with the active cooperation of the Cameroonian Customs Administration and had been held in Douala (Cameroon) from 11 to 22 November 1985. It had been attended by 33 French-speaking officials from 9 countries. The fifth course would be held, in English, in Arusha (Tanzania) from 19 to 30 May 1986.

17. Continuing his report, the Chairman of the Technical Committee said that the Committee had taken note of a study on the organizational requirements for implementation of the GATT Valuation Code and had instructed the CCC Secretariat to amend it to reflect the comments

submitted. The amended study would be issued shortly as a CCC Secretariat document. The Technical Committee had adopted two new instruments relating to technical matters:

- a set of examples to illustrate Advisory Opinion 14.1 on the meaning of the expression "sold for export to the country of importation". Given the importance of the subject, the Technical Committee had decided to supplement the Opinion with more examples based on practical experience;
- a study on the treatment of rented or leased goods, providing information on the appropriate valuation methods, together with general advice on their application, and including an example illustrating the determination of the customs value on the basis of rental charges. The Technical Committee had decided to supplement the instrument with case studies on rented or leased imported goods and, in particular, on the decision relating to the treatment of interest charges.

18. In addition, the Technical Committee had examined a number of other technical matters:

- Treatment of quantity discounts. The Secretariat would draft a new document based on material to be submitted by administrations.
- Practical application of Article 7 of the Agreement. The Technical Committee had agreed that the cases furnished so far concerning the application of Article 7 should be listed in a single document and a reference to that document included in the Index of valuation rulings and conclusions under the heading "Fallback method".
- Treatment of quota charges under Article 1. The Technical Committee had a preliminary examination of an example put forward by the Swedish Administration. On the basis of the replies received from administrations on how they would rule on such a case, the CCC Secretariat would prepare a new document for consideration at the next session.
- Valuation of carrier media bearing software for data processing equipment. The Technical Committee had examined a document from the International Chamber of Commerce concerning the valuation of computer software and, more specifically, the requirement to distinguish the cost or value of the data or instructions from the cost or value of the carrier media. The CCC Secretariat had been instructed to invite the administrations concerned to send details of their practices regarding the valuation of carrier media bearing software, if possible with examples, for consideration at the Committee's next Session.

19. Concluding his report, the Chairman of the Technical Committee said that the next session of the Technical Committee would be held from 6 October to 10 October 1986. In addition to the points already considered, the next session was expected to consider a paper from the International Chamber of Commerce concerning practical problems with the deductive method of valuation. The existing Chairman was re-elected Chairman, and Mrs. A. Ganz (Austria) First Vice-Chairman and Mr. D. G. Zolezzi (Argentina) Second Vice-Chairman.

20. The Committee took note of the report on the work of the Technical Committee and expressed appreciation of the continued valuable work of that body.

E. Information on implementation and administration of the Agreement

(i) Canada (VAL/1/Add.17 and Suppls., VAL/2/Rev.11/Add.14, VAL/W/35)

21. The representatives of Sweden, speaking on behalf of the Nordic countries, and Australia thanked Canada for the responses to their questions contained in document VAL/W/35 and indicated that they found the responses satisfactory.

22. The representative of Canada said that his delegation remained ready to answer further questions on his country's legislation, both bilaterally and in the Committee.

23. The representative of the European Communities recalled that at the November 1985 meeting of the Committee he had asked about the provision to the Committee of certain texts concerning Canada's laws, regulations and administrative procedures (VAL/M/14, paragraph 35). The representative of Canada said that arrangements had been made for these documents to be made available to the Committee.

(ii) Czechoslovakia (VAL/1/Add.18, VAL/2/Rev.1/Add.15)

24. The representative of Czechoslovakia said that the revised version of the operational instructions in the form of a decree of the Ministry of Foreign Trade, which he had informed the Committee at its November 1985 meeting was under preparation, was not yet available. He therefore proposed that the discussion on the legislation of his country be postponed to the autumn meeting of the Committee, when the new decree should be available, together with a revision of the responses to the checklist of issues that took into account the new decree. Referring to document VAL/W/34/Rev.1, he said that the Committee decisions on interest charges and computer software were being implemented, for the time being, by internal instructions of the central customs administration. They would be formally incorporated in Czechoslovakia's legislation in the new decree.

25. In reply to an observation from the representative of the European Communities, the representative of Czechoslovakia said that he would ensure that all documents referred to in his country's responses to the checklist of issues were available to members of the Committee.

26. The Committee agreed to revert to the legislation of Czechoslovakia at its November 1986 meeting.

(iii) Republic of Korea (VAL/1/Add.19 and Suppl. 1, VAL/2/Rev.2/Add.1)

27. The representative of the Republic of Korea said that the Agreement had been fully applied by his country since 5 February 1986. To facilitate this, his country had been partially applying the Agreement since 1 July 1984, with some exceptions such as the determination of the customs value of passenger's luggage on the basis of the domestic price. With effect from 5 February 1986, these exceptions had become invalid, by the application of Article 43:14 of the Customs Law, which stated that when the provisions of the Agreement were different from those of national law, the former would apply. His delegation, therefore, believed that under present legislation there should be no difficulties in the application of the

Agreement. Nonetheless, his Government would revise those legislative provisions that conflicted with the Agreement as soon as possible. The Commissioner of the Customs Administration had recently amended the Commissioner's Decree to reinforce application of the Agreement. This revised version would be submitted in English to the Committee before its November meeting. He informed the Committee that answers to a list of questions that his delegation had received from the United States delegation would be provided in writing shortly.

28. The representative of the European Communities said that the intent and thrust of the Korean legislation was clearly in conformity with the Agreement. His delegation had noted the provisions of Article 43:14. His delegation had recently sent a series of comments and questions to the Korean delegation.

29. The Committee agreed that the questions put to Korea and the Korean answers to them would be circulated as a Committee document in advance of the November 1986 meeting and that it would revert to the Korean legislation at that meeting.

(iv) Status of application of the Committee Decisions on interest charges (VAL/6/Rev.1) and computer software (VAL/8)

30. The representative of the United States expressed the support of her delegation for the work underway in the Technical Committee to ensure uniform application of the decision on computer software (VAL/8) among those signatories that were applying its paragraph 2.

31. Referring to document VAL/W/34/Rev.1, the representative of the European Communities drew attention to the fact that some Parties had not provided information on the application of the Committee decisions on interest charges and computer software.

32. The representative of New Zealand said that paragraph 2 of the Decision on computer software had been applied by administrative means by a customs concession. Legislation was being drawn up to implement it formally. No importer in New Zealand was paying duty on the value of information recorded on software discs or tapes.

33. The representative of Austria said that Austrian practices were in accordance with paragraph 2 of the Decision on computer software. In the course of the procedure for the formal acceptance of the Decision, certain legal questions related to other valuation principles had arisen, which would require further study. She assured the Committee that, pending the outcome of these deliberations, the present practices would be continued.

34. The Committee agreed to revert to this matter at its meeting of November 1986 on the basis of an updated version of document VAL/W/34/Rev.1.

(v) Brazil

35. The representative of Brazil said that the notification of the Brazilian legal texts by document VAL/22 had been made to provide concrete indications of the Brazilian Government's determination to apply the Agreement within the prescribed time-frame. These documents, however, did not contain the specific Brazilian legislation for the internal application of the Agreement with effect from 23 July 1986. The Customs Regulations published by Decree 91030 of 5 March 1985 were a first attempt to

consolidate internally the entire body of customs legislation in force, together with an updating and clarification of certain provisions. This exercise had been carried out bearing in mind that Brazil would be applying the Agreement from 23 July 1986, as clearly stated in Article 90 of the Decree. Act no. 27 of 15 February 1985 also gave indications of preparations for the application of the Agreement. Among other things, it altered the structure of the Federal Income Department to include a new body called the Coordination of the Customs Control System with regional and local ramifications throughout Brazil. Some of the main tasks of this new body were to undertake studies, research and analysis aimed at improved customs control. In regard to the legal text that would adapt Brazilian law for the introduction of the Agreement on 23 July 1986, preparations were in a final stage for a Decree that would promulgate the Agreement in Brazil. The Decree would be notified to the Committee in the near future. It would reproduce, with the necessary adaptations, the provisions of the Agreement, which would thus become part of national legislation. It would also give to the Federal Income Department competence to adopt complementary regulations as necessary and appropriate. As a result of the Decree certain parts of the legislation notified by document VAL/22 would be amended.

36. The representative of the United States recalled that her delegation had requested at the November 1985 meeting of the Committee information about the relationship between the present Brazilian licensing system and the introduction of the Agreement (VAL/M/14, paragraph 43). The representative of Brazil said that this matter was being taken into consideration in Brasília. He recalled that, as he had already mentioned, changes were being made to national legislation to apply the Agreement. His delegation would provide more detailed information when it was available.

37. The Chairman suggested that the Committee take up the Brazilian legislation at its November 1986 meeting and expressed the hope that the necessary translations and the accompanying responses to the checklist of issues (VAL/2/Rev.2) would be made available shortly. He asked delegations wishing to put questions to provide the Brazilian delegation advance notice of them through the secretariat. The Committee so agreed.

F. Reservation under paragraph I:3 of the Protocol

38. The representative of Brazil, introducing document VAL/W/36, recalled that in May 1985 his Government had informed the Committee of its intention to continue to apply minimum values and reference prices after application of the Agreement on 23 July 1986. In conformity with the procedures adapted by the Committee in connection with reservations under paragraph I:3 of the Protocol (VAL/M/1, annex 2), his delegation had forwarded to the secretariat on 17 April 1986 the proposal contained in VAL/W/36. This document contained a detailed listing of the minimum values and reference prices presently in force in Brazil. He stressed that the Brazilian proposal had been put forward within the time-frame foreseen by the Committee's procedures. In accordance with paragraph I:3 of the Protocol, the proposal was for the retention of minimum values and reference prices on a limited and transitional basis. He further emphasized that only 0.34 per cent of total Brazilian imports were subject to such minimum values and reference prices. He believed that the Brazilian delegation had fulfilled its obligations in this matter and looked forward to an early decision by the Committee.

39. A number of delegations indicated that they needed more time to study the details of the Brazilian proposal.

40. The Committee, noting that this matter would have to be dealt with before Brazil starts applying the Agreement on 23 July 1986, agreed to meet again on 13 June 1986 for this purpose and further agreed that, to facilitate a decision, prior informal consultations would be held as necessary.

G. Preparation for annual review of the implementation and operation of the Agreement

41. The Committee instructed the secretariat to prepare a background note for the 1986 annual review, to be held at the Committee's autumn 1986 meeting, along the same lines as that prepared for the 1985 review (VAL/19).

42. The representative of the European Communities hoped that this note would bring out the positive experience with the application of the Agreement so far.

H. Other business

(i) Panelists

43. The Chairman recalled that, in accordance with paragraph 2 of Annex III to the Agreement, Parties were expected at the beginning of 1986 to nominate persons available for panel service in 1986 or to confirm existing nominations. To date, nominations for 1986 had been received from the EEC, Finland, Hong Kong and the United States. He urged other parties to communicate the relevant information to the Chairman, through the secretariat, as soon as possible.

44. The representative of Sweden said the 1985 nominations of Sweden were valid for 1986 also.

(ii) Private companies engaged in customs valuation

45. The representative of the United States said that her country was experiencing growing trade problems associated with the activities of private companies engaged in customs valuation on behalf of governments. This function was normally carried out by these companies through pre-shipment inspections in the country of exportation. Normally, the form required for the contracting government to permit importation, usually called a clean report of findings, would not be issued by these companies if they deemed the exporter's price too high or too low. These price determinations were supposedly based on the prevailing export market price and were usually based on price lists. They were thus made in ways not permitted under the Valuation Agreement. So that price comparisons could be made, exporters were required to provide copies of invoices, price quotes, price lists, letters indicating f.o.b. value, letters of credit if applicable, and usually a statement regarding commissions and rebates. Exporters were also requested to substantiate their prices and to provide a formula for how they arrived at the prescribed value. The price control activities of these companies in this area went significantly beyond helping governments to check on false invoicing, since they were in many cases in effect setting prices for the goods and acting inconsistently with the basic notion of transaction value under the Valuation Agreement, as well as the principles of Article VII of the GATT. Her delegation had

brought this matter to the Committee because some countries, which had in the past shown interest in acceding to the Agreement and were in some cases observers in the Committee, had contracted the services of these private firms to do their customs valuation. The activities of these companies might thus be affecting the Committee's efforts to encourage further accessions to the Agreement. Further, since an increasing amount of trade was being affected, there was a risk that the principles of the Valuation Agreement and of the GATT generally might be undermined.

46. The representative of the European Communities said that the matter raised by the United States delegation was an important problem that required further consideration. The activities in question could undermine the attainment of the objectives of the Valuation Agreement.

47. The Chairman suggested that the Committee revert to this matter at its November 1986 meeting with a view to exchanging information on the implications for the operation of the Agreement and the accession of further countries. He urged Parties having further information and experience in this connection to make it available to the Committee. The Committee so agreed.

(iii) Dates of next meetings; draft agenda of next meeting

48. In addition to meeting on 13 June 1986 (see paragraph 40 above), the Committee agreed to meet again on 10 November 1986, continuing 11 November if necessary. The Committee also agreed to set aside tentatively 7-8 May 1987 for its first meeting in 1987.

49. The Committee agreed that the draft agenda of its November 1986 meeting would include the following:

- accession of further countries to the Agreement;
- technical assistance;
- report on the work of the Technical Committee;
- information on implementation and administration of the Agreement;
- information on the situation in regard to the application of the provisions of the Agreement by India;
- private companies engaged in customs valuation;
- sixth annual review of the implementation and operation of the Agreement;
- annual report to the CONTRACTING PARTIES.