

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

VAL/Spec/32
11 March 1991

Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING OF 7 FEBRUARY 1991

Chairman: Mr. A. de la Peña (Mexico)

1. The Committee on Customs Valuation met on 7 February 1991.
2. The following agenda was adopted:

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A. Election of officers

3. The Committee elected Mr. A. de la Peña (Mexico) Chairman, and Mr. C. Mbegabolawe (Zimbabwe), Vice-Chairman for 1991.

B. Accession of further countries to the Agreement

4. The Chairman stated that the Government of Poland had accepted the Agreement on 30 October 1990, subject to ratification (VAL/41).

5. The representative of Poland stated that the Customs Law of 28 December 1989 had brought the provisions of the customs law on valuation into conformity with the Agreement (VAL/1/Add.28). His country had been implementing the provisions of the Agreement since 1 January 1990 when the law had entered into force. Poland had enacted the law as part of the basic legislation which aimed at transforming its economy. The internationally agreed rules on customs valuation had been incorporated in the national legislation with the purpose of establishing an effective tariff system in accordance with the objectives of GATT. The application of the Agreement required the training of customs officials and his authorities would make use of the technical assistance activities of GATT and of the Customs Co-operation Council.

6. The Committee took note of the statement and welcomed the acceptance of the Agreement by Poland.

C. Report on the work of the Technical Committee

7. A report by the Chairman of the Technical Committee on Customs Valuation on the twentieth Session of the Technical Committee on Customs Valuation was communicated to the Committee. The full report of the Session, held in Brussels from 8-12 October 1990, is contained in CCC Doc.36.280.

8. In connection with intersessional developments, the report stated that the Technical Committee had been informed that the Council, at its 75/76th Sessions held in Istanbul, Turkey, had re-elected Mr. K. Doua-Bi for a further five-year term as Director, Valuation. Subsequent to this, Mr. Doua-Bi had been appointed by the Administration in Côte d'Ivoire to the post of Director General of Customs. The Deputy Director had been appointed to act as Director until new elections could be held at the next Council Sessions in June 1991.

9. The Technical Committee had been informed that the Council approved the Reports of the Technical Committee including the following instruments:

- Commentary on the application of Article 1, paragraph 2
- Case studies on the application of Article 8.1 (b)
- Four examples to be added to the advisory opinion on currency conversion
- Commentary on the application of the deductive value
- Procedure for consideration of matters submitted to the Technical Committee.

10. The Technical Committee had been informed that the Council had also examined a proposal to conduct a study of possible technical assistance needs for Customs Services in countries adopting market economies. The Council had agreed to constitute a task force to study this area and to report on a plan of action to the Policy Commission meeting in December. There would be implications for valuation in this study and the Technical Committee would be kept informed as to the action to be taken.

11. With respect to the Valuation Control Handbook, a first draft had been prepared and examined by a working group before the twentieth session of the Committee. The working group had undertaken a careful review of the draft, taking care to ensure that the provisions and spirit of the Agreement were properly reflected. The Group had agreed on the overall form and structure of the Handbook. While certain amendments had been approved, discussions on two chapters which were on the current agenda of the Technical Committee had been deferred. The Secretariat had been asked to rewrite the draft and to reissue it during the intersession. The Working Group had held its second meeting from 21 to 23 January 1991. Following a review of the amended text, the Group had decided to finalize its work before the twenty-first Session of the Technical Committee. The Handbook would be submitted to the Council for approval at its next Session in June 1991.

12. The report further stated that during the nineteenth Session the Committee had been informed that an International Conference to mark the tenth anniversary of the entry into force of the Agreement had been planned. The provisional programme for the Conference had been distributed and members had been invited to comment. In addition to written responses, several administrations had expressed support orally. Considerable importance had been placed on this Conference. Since its meeting in Seoul in 1984, the Council had had as a major goal the promotion, to its members and to other interested groups, of the conventions and international agreements which it was in charge of administering. In this respect, the Agreement on Customs Valuation had been one of the most important. Therefore, this Conference was seen as a means to further this goal. For the time being, the programme of the Conference had been finalized and invitations to all members had been sent out.

13. In the area of technical assistance, the Technical Committee had taken note of the information document (Doc.36.196) which contained revised information on the technical assistance programme. The Committee had been informed that in collaboration with the Nigerian Customs Administration, the tenth Training course on the Agreement on Customs Valuation had been organized by the Council in Abuja, Nigeria from 2 to 13 April 1990. Fifty-four mid-management level officers from six countries and one regional organization (ECOWAS) had attended the course. It had been felt that the training course had cleared up a number of misgivings which had existed with respect to the Agreement although issues regarding the possible loss of revenue and the problem of valuation fraud as a result of the adoption of the Agreement had remained a matter of some concern.

14. A Customs valuation seminar had been organized by the Council in Bamako, Mali from 9 to 13 April 1990. It had been attended by twenty-nine local Customs officials and the programme had been devoted to a comparison of the BDV system and the Agreement on Customs Valuation. Although the Malian Administration applied the BDV on a de facto basis, the participants had considered that the seminar had been useful for a further consideration of the adoption of the Agreement on Customs Valuation.

15. A seminar on Customs valuation had been held in Riyadh, Saudi Arabia from 2 to 6 June 1990 under the sponsorship of the Department of Customs of the Kingdom of Saudi Arabia. Fifty-seven senior and mid-management level officials from four countries of the Arab Gulf States had attended the seminar. The Gulf co-operation Council would be examining the possibility of recommending the adoption of the Agreement on Customs Valuation for its member countries.

16. In the context of the Inter-American Programme for the Improvement of the Customs Systems to Promote Regional Trade (PIMSAPOC), the Organization of American States had requested Council participation in a series of regional training courses, some of which had dealt with valuation matters. Accordingly, the Council had provided a lecturer for a valuation course organized with the Secretariat of the Caribbean Community (CARICOM) in Kingston, Jamaica, from 24 September to 12 October 1990. Three other valuation courses were to be or had been held in Montevideo, Guatemala City and Lima in the Spanish language. A Council official had attended the Lima course as a lecturer to assist OAS officials. The CCC had welcomed this initiative of the OAS and had encouraged the Members' support of this project.

17. With respect to technical questions, the report stated that Technical Committee had adopted the following instruments:

- Activities undertaken by the buyer on his own account after purchase of the goods but before importation. The Technical committee had adopted a commentary which examined the circumstances under which the cost of activities undertaken by the buyer on his own account after purchase of the goods but before importation would or would not be considered as part of the Customs value determined under the provisions of Article 1.
- Buying Commissions. The Technical Committee had been examining the question of buying commissions since its fourteenth Session. Initially, the topic had been brought to the attention of the Committee as an actual case. During its deliberations, the Committee had decided that, instead of dealing with a specific set of facts, the identification of the role of intermediaries and the documentary evidence required in respect of this subject, needed to be addressed in the form of a commentary. Following several revisions, the commentary had been considered to be acceptable,

except for one paragraph treating the question of relationship among the parties involved in a transaction. While certain administrations had preferred that the document maintained a general approach, others had been in favour of a detailed examination of the question of relationship. The commentary adopted by the Technical Committee maintained the general approach with the addition of a new paragraph to meet the concerns expressed.

- Insurance premiums for warranty. The Technical Committee had adopted a case study on the valuation treatment of insurance premiums for warranty under the provisions of Article 1 of the Agreement. It had been concluded that, according to the facts of this case, warranty costs were part of the price actually paid or payable being made by the buyer to the seller or to a third party to satisfy an obligation of the seller as a condition of the sale of the imported goods.

18. Other technical questions considered by the Committee were as follows:

- Confirming commissions. The Technical Committee had examined a draft explanatory note on the valuation treatment of confirming commissions in the context raised by a Party. Several proposals had intended to ensure that situations where the seller resorted to having the payment for the goods confirmed by a bank or by a confirming house were properly reflected. The Secretariat had been instructed to revise the document, taking into account the comments made.
- Royalties and licence fees. The Technical Committee had examined an information document on the implication of the phrases "related to the goods being valued" and "as a condition of sale" in relation to royalties and licence fees under the terms of Article 8.1 (c). The review of the document had brought out some useful points and the Secretariat had been requested to prepare three issues for examination at the next session: (a) the definition of the terms royalties and licence fees, (b) practical examples to illustrate the application of Article 8.1 (c) and (c) the relationship between the price actually paid or payable under Article 1 and Article 8.1 (c).
- Right of reproduction. The Technical Committee had examined an information document which was based on various comments and studies dealing with the topic. While certain delegations had suggested postponing consideration of the matter until Article 8.1 (c) had been fully examined, others had found the document useful referring to many of the problems raised in connection with the application of Article 8.1 (c) of the Agreement. Following a paragraph by paragraph examination of the document, the Secretariat had been instructed to revise it in the light of the views expressed during the discussion.

- Materials consumed in the production of the imported goods. This issues had been raised during the discussion of a case study on the application of Article 8.1 (b) relating to assists. It had been felt that there was a distinction to be made between subparagraphs 8.1 (b) (i) and (iv) of this article of the Agreement, and particularly to determine the scope of the term "production". In view of the fact that administrations had not encountered any major problems nor had had sufficient practical experience in the application of this provision of the Agreement, it had been decided not to pursue examination of this issue for the time being.

19. During the course of the study of the question of materials consumed in the production of the imported goods, the Secretariat had noted a linguistic inconsistency between the English, French and Spanish texts of subparagraph 8.1 (b). The term used in the English text was "in connection with the production" while in French, it was "lors de la production" and in Spanish "en la produccion". The English text appeared to allow much broader interpretation to be given to the quite narrow wording used in defining the types of assets covered by paragraph (b) of the Article.

20. The Technical Committee had heard an exchange of views in response to the Secretariat's enquiry whether the broader English wording of subparagraph (b) could affect the interpretation of subparagraphs (i) to (iv). While certain Administrations had been of the opinion that the introductory sentence was not material to the specific provisions contained in subparagraphs (i) to (iv), others had been of the view that the whole proviso of Article 8.1 (b) should be taken into consideration. Eventually it had been decided to refer this matter of linguistic inconsistency to the Committee on Customs Valuation for consideration.

21. The Technical Committee's twenty-first Session would take place from 12 to 15 March 1991.

22. The Committee took note of the report on the work of the Technical Committee.

D. Information on implementation and administration of the Agreement

(i) Zimbabwe

23. The Committee took up the question of the extension of delay by Zimbabwe under Article 21.2 of the Agreement following the request received from this delegation (VAL/42). In the light of the informal consultations that he had held, the Chairman put forward the following draft text for a decision by the Committee:

"1. The Committee on Customs Valuation notes that the delay in the application of Article 1.2(b)(iii) and Article 6 of the Agreement by Zimbabwe under Article 21.2 expired on 31 December 1990."

"2. The Committee notes that Zimbabwe has found that the three year period of delay in regard to the above Articles is insufficient to make all preparations necessary to implement these provisions and that Zimbabwe requires further delay for a period of two years in the application of these Articles, on the basis of the grounds referred to in the communication of the Government of Zimbabwe (VAL/42)."

"3. The Committee further notes that Zimbabwe accepted the Agreement on 23 October 1987 and implemented it with effect from 1 January 1988, i.e. without the delay in the application of the Agreement provided for developing countries under Article 21.1."

"4. The Committee accordingly decides that Zimbabwe may continue to delay application of Article 1.2(b) (iii) and Article 6 of the Agreement for a period of two years, as from 1 January 1991."

"5. It would be understood that agreement of Parties to the extension of the delay provided under Article 21.2 would not be regarded as a precedent for other Parties, and that any future case should be treated on its own merits."

"6. The Committee agrees that, during the period of extension of delay, periodic progress reports on the steps taken to implement Article 1.2(b) (iii) and Article 6 will be provided to the Committee by Zimbabwe. An initial progress report will be provided to the Committee by 31 December 1991."

24. The Committee adopted the decision as proposed by the Chairman.

(ii) Malawi

25. The Committee took note of the national legislation of Malawi (VAL/1/Add.27) and agreed to revert to it at its next meeting.

(iii) India

26. The representative of the European Economic Community informed the Committee that rule 10 of the Customs Valuation Rules 1988 of India had been amended as of 31 October 1990. He sought clarification from the delegation of India concerning the amended legislation: what was the current status of the amendment? when would the new legislation be notified to the Committee? was the new rule applied on a systematic or selective basis? whether the implementation of the new rule had led to delays in the clearance of goods? what type of action the Indian customs authorities would take in cases where the importers were unable to comply with the requirements in the new rule?

27. The representative of the United States asked whether, in terms of the new legislation, the invoice of the manufacturer had to be presented in all cases where the exporter and the manufacturer of the goods were not the same? if this document was not required systematically, what was the basis for deciding when would it be required? what would be the consequences of not providing the invoice? if the customs authorities required the relevant information in order to determine whether the declared value can be taken as the transaction value, would the customs authorities be willing to accept alternative forms of evidence when the relevant documentation was not available to the importer?

28. The Committee took note of the questions put and invited the delegation of India to give its replies in writing.

(iv) Cyprus

29. The representative of the United States asked the title of the publication in which the implementing legislation of Cyprus was made available to the public.

30. The Committee agreed to revert to the legislation of Cyprus at its next meeting when it also expected to have before it the replies by Cyprus to the checklist of issues (VAL/2/Rev.2).

(v) Australia

31. The representative of the United States said that his authorities were still concerned about the amendments to the Australian legislation. They were examining the information supplied to the Committee (VAL/1/Add.4/Suppls.2-4) and they would monitor the actual application of the modified legislation in order to assess its effect on trade.

32. Following the request of the representatives of the United States and the European Economic Community, the Committee agreed to retain the implementing legislation of Australia on its agenda.

(vi) Republic of Korea

33. The Committee agreed to conclude its examination of the recent amendments to the legislation of the Republic of Korea (VAL/1/Add.19/Suppls.3 and 4).

(vii) European Economic Community

34. The Committee took note of a recent modification of the basic regulation for customs valuation purposes which were applicable from 1 January 1991 (VAL/1/Add.2/Suppl.11).

35. The Committee took note of the statements made under this item and agreed to revert to the implementing legislation of Australia, Cyprus, India and Malawi at its next meeting.

E. Technical Assistance

36. The Committee noted that the most recent information concerning technical assistance was contained in document VAL/W/29/Rev.5 dated 31 January 1991.

F. Other Business:

(i) Linguistic Consistency

37. The Chairman informed the Committee that the attention of the Technical Committee of the Customs Co-operation Council had been drawn to a question of linguistic consistency between the English, French and Spanish texts of introductory sub-paragraph of Article 8.1 (b) of the Agreement (ref. paragraphs 19-20 of these minutes).

38. The representative of Canada said that sub-paragraphs (i) to (iv) of Article 8.1 (b) provided a definite list of specific types of assists covered by that article. In her delegation's view the linguistic inconsistency that had been perceived in the introductory part of the article did not have the potential to allow a broader interpretation of that article. The representative of Australia said that the provisions of the four sub-paragraphs did not leave room for any ambiguity in the language of the introductory part of the article. The representative of the European Economic Community stated that his delegation had not had any practical problems in the application of Article 8.1 (b) due to the divergence in the texts in different languages.

39. The Chairman invited the members of the Committee to reflect on this question of linguistic inconsistency on Article 8.1 (b) of the Agreement and to give their comments in writing before the Committee reverted to the discussion of this matter at its next meeting. It was so agreed.

G. Date and draft agenda of the next meeting

40. The Chairman suggested to fix the date and agenda of the next meeting in consultation with interested delegations. It was so agreed.