

GENERAL AGREEMENT ON

RESTRICTED

VAL/Spec/35

5 June 1992

TARIFFS AND TRADE

Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING OF 14 MAY 1992

Chairman: Mr. D. Shark (United States)

1. The Committee on Customs Valuation met on 14 May 1992.

2. The following agenda was adopted:

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A. Election of Officers

3. The Committee elected Mr. D. Shark (United States) Chairman, and re-elected Mr. C. Mbegabolawe (Zimbabwe) Vice-Chairman for 1992.

B. Request by the Russian Federation for Observer Status in the Committee

4. The Chairman drew the Committee's attention to a request made by the Russian Federation to be represented as an observer at the meetings of the Committee on Customs Valuation. The letter had been circulated in document VAL/W/55, and described the request as a "further step in examination of the prerequisites for a future accession of the Russian Federation to the General Agreement and the Agreement on the Implementation of Article VII of the GATT". The Chairman recalled that the GATT Council at its meeting of 16 May 1990 had decided to grant the Union of Soviet Socialist Republics (USSR) observer status in the Council (C/M/241), and that the USSR had also obtained observer status in 1991 in both the Committees on Anti-Dumping and Import Licensing. He noted that in a communication dated 26 December 1991 and circulated in document L/6978, the Russian Federation had indicated that the participation by the USSR as an observer in the various GATT bodies would be continued by the Russian Federation. The Chairman noted that at its first meeting held on 13 January 1981, the Committee had agreed that "Observers may participate in the discussion but decisions shall be taken only by signatories" and that "The Committee may deliberate on confidential matters in special restricted sessions" (VAL/M/1, Annex I). He also pointed out that the Council had agreed at its meeting of 16 May 1990 to review the whole issue of the status of observers and their rights and obligations at the end of 1992. The Chairman then proposed that the Committee grant observer status to the Russian Federation. The Committee agreed to the Chairman's proposal.

5. The Chairman welcomed the Russian Federation as an observer to the Committee, and stated that the Committee appreciated the interest shown by the Russian Federation to follow the work of the Committee in an observer capacity in order to develop a better understanding of the prerequisites of a future accession to the Agreement. He encouraged the Russian Federation to provide the Committee from time to time, with reports on its economic reform process as it related to matters covered by the Agreement.

6. The observer for the Russian Federation thanked the Committee for its decision to grant observer status to his country. He added that this status would provide his country with the opportunity to take fully into account the relevant rules and disciplines of the multilateral trading system which was of special importance to his country in view of the unprecedented economic reforms taking place there. The decision to obtain observership in the Committee had also to be viewed as a further step in the examination of the prerequisites for a future accession of the Russian Federation to the General Agreement. He added that his delegation would provide this Committee, as it had been doing in its capacity as observer in other GATT bodies, with information on the economic reform process in the Russian Federation as it related to matters covered by the Agreement.

7. The Committee took note of the statements made.

C. Report on the work of the Technical Committee

8. The observer from the Customs Co-operation Council (CCC) presented, on behalf of the Chairman of that body Mr. T. Lobred, a report on the twenty-third session of the Technical Committee on Customs Valuation held from 16 to 20 March 1992. The report of the session had been circulated in CCC document 37.420.

9. With respect to election of officers, the Technical Committee had re-elected Mr T. Lobred (United States) Chairman, and elected Mr. R. Karpoja (Finland) and Mr. J.S. Milnes (Canada) Vice-Chairmen.

10. In connection with intersessional developments, the Technical Committee had noted a decision by the Andean Pact countries (Bolivia, Colombia, Ecuador, Peru, Venezuela) to apply the Agreement on a de facto basis from 1 January 1992.

11. The Technical Committee had also been informed that the French, English and Spanish versions of the Customs Valuation Control Handbook had been completed, and that the Amending Supplement No. 9 to the Customs Valuation Compendium had been printed.

12. In the area of technical assistance, the Technical Committee had taken note of information document 37.038 which contained updated information on seminars and training courses organized on the GATT Agreement and the activities of the CCC in this area. A seminar, organized and hosted by the Egyptian Administration in collaboration with the CCC, had been held in January 1992. Over fifty customs officers from Egypt, Jordan, Libya, Saudi Arabia, Sudan and Yemen had participated in the seminar which had been conducted by three CCC officials.

13. In February 1992, a seminar entitled "The Customs Administration and the International Environment" had been held in Paris. The seminar had been organized by the International Public Administration Institute in collaboration with the French Customs Administration and the CCC Secretariat. A CCC official had delivered a presentation on valuation to sixteen participants from Africa, Asia and Eastern Europe.

14. In October 1991, an intensive customs training course under the CCC and Japanese Customs technical co-operation programme had been held in Kashiwa City in Japan for twelve officials from Bangladesh, China, Lesotho, Malaysia, Philippines, Sri Lanka, Thailand and Zimbabwe. The CCC had been represented by an official from the Valuation and Training Directorate who had given presentations on the CCC and customs valuation.

15. From 17 October to 2 November 1991, a member of the Valuation Directorate had assisted the Ecuadorian Customs to prepare for new legislation and value declaration forms in time for Ecuador's de facto application of the GATT Agreement in early 1992.

16. With regard to technical issues in respect of which an instrument had been adopted, the observer from the CCC stated that the Technical Committee had adopted an Explanatory Note on confirming commissions. This Note had concluded that the payment made by a buyer to guaranty the seller against the commercial risk of non-payment for the imported goods by a buyer's bank, would be included in the price actually paid or payable if this payment had been made as a condition of sale of the imported goods. This Decision was consistent with the interpretation which would be given to the provisions of Article 1 and paragraph 8 of the Protocol, which made clear that the price actually paid or payable was the total payment made or to be made directly or indirectly by the buyer to or for the benefit of the seller of the imported goods.

17. The observer from the CCC also reported that one technical item which had been removed from the agenda of the Technical Committee concerned the examination of forms of payment for royalties and licence fees. Reference had initially been made to this matter in a draft Commentary on the definition of royalties and licence fees, but the Committee at its last session had asked that this issue be examined on the basis of a separate information document. After consideration of this document, the Committee had concluded that the matter could be dropped completely from the Conspectus of questions to be examined by the Committee. It had been agreed, however, that the document would be retained for information purposes.

18. With respect to technical issues currently being considered, the observer from the CCC stated that the Technical Committee's programme of work included the following topics:

- Definition of royalties and licence fees. At its last meeting, the Technical Committee had instructed the Secretariat to prepare a revised draft Commentary which took into account the amendments made and the indications furnished by the Committee at that meeting. The Technical Committee at its twenty-third session had continued to examine the revised draft Commentary.
- Application of Article 8.1 (c). The Committee having approved the amendment of the initial agenda title of this issue, had decided to retain suitable examples which provided information additional to that which was already contained in the Advisory Opinions 4.1 to 4.6 of the Valuation Compendium. The Secretariat had been instructed to revise these new examples on the basis of the amendments made.
- Scope of the expression "right to reproduce the imported goods" within the meaning of the Interpretative Note to Article 8.1 (c). The Technical Committee had continued to examine the draft Commentary on this issue. The Secretariat had been requested to revise the document, so as to take into account the suggested changes and the additional examples which would illustrate the key points of the Commentary. The Technical Committee had decided to review the latest revision at its next meeting.
- Application of the price actually paid or payable. The Committee had examined two concrete examples that had been put forward by two parties to illustrate the application of the price actually paid or payable. The Committee had decided to further examine these examples at its next meeting.
- Relationship between Articles 8.1 (b) (ii) and 8.1 (b) (iv). The Secretariat had prepared a draft Commentary which concluded that since the Agreement required the value of the category of assists covered by Article 8.1 (b) (ii) to be determined on the

basis of the cost of acquisition or of production and that, in accordance with generally accepted accounting principles, the cost of any design work would be included in such a value, then there would be no exemption possible for design work undertaken in the country of importation. The Committee had also noted that individual countries had the freedom to exempt such costs if they so wished. The Committee had requested the Secretariat to prepare for the next session a revised draft which took into account suggested amendments and comments.

- Correlation between paragraphs (c) and (d) of Article 8.1. This issue concerned the examination of the conditions for the application of Article 8.1 (d), particularly in respect of payments which could entail application of Article 8.1 (c). The views expressed by parties had suggested that the Committee was not yet ready to approach this question. The Committee had agreed to place this item in Part III of the Compendium until further discussion had been undertaken on this matter.

19. Continuing his report, the observer from the CCC said that in connection with new technical questions, the Committee had agreed to examine a case study on the proper valuation treatment to be given under the Agreement to certain tobaccos and tobacco products which were subject to licensing agreements. This issue had therefore been placed in Part II of the Compendium for consideration at the next meeting of the Committee.

20. The Technical Committee's twenty-fourth session would take place from 19 to 23 October 1992.

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

D. Information on Implementation and Administration of the Agreement

(i) Malawi

22. The Chairman recalled that the implementing legislation of Malawi had been circulated in document VAL/1/Add.27. He noted that to date the responses to the checklist of issues had not been received from Malawi.

23. The Committee agreed to revert to the legislation of Malawi when Malawi's responses to the checklist of issues had been received.

(ii) India

24. The Chairman recalled that at its last meeting, the Committee had been informed by the Indian representative that as a result of the concerns expressed in the Committee, the notification of 3 August 1990 which amended Rule 10 of the Customs Valuation Rules, 1988 of India had been amended by a notification dated 1 October 1991. Notification of the new amendment was circulated to Committee members in document VAL/1/Add.24/Suppl.1.

25. The representative of the United States stated that the information and the explanations provided by India at the last Committee meeting on the new notification dated 1 October 1991 had not eliminated the concerns voiced by his delegation at that meeting. While he could understand that customs officials needed the flexibility to seek documentation and ask for information when they had reason to doubt the truth or accuracy of a declared value, he had grave doubts as to the appropriateness of a customs official requiring an importer to provide a document that the importer might not reasonably be expected to have access to. His delegation had in the past explained the commercial reasons why in a bona fide transaction, an exporter who was not the manufacturer might be reluctant to provide the manufacturer's invoice to an importer. His authorities had noted India's response that reference to this document in its legislation had only been

intended to ensure that customs officials had the necessary flexibility to request this document, and that such mention did not give the document more importance than any other alternative forms of information which could substantiate the claim that the declared value was the correct value. However, his authorities were of the opinion that as this was the only type of document that had been specifically referred to in this regulation, it would encourage customs officials to request it whenever they had doubts about the truth or accuracy of a declaration. Moreover, if Indian customs officials were to deny the transaction value because an importer could not produce this document, such an act would raise serious questions regarding India's compliance with its obligations under the Agreement. His delegation reserved its rights with respect to this matter.

26. The representative of the European Communities stated that his authorities continued to have serious concerns about the notification dated 1 October 1991 due to its potential negative effects. His authorities' concern stemmed from the fact that specific mention of such a document in India's regulation could lead Indian customs officials to request the manufacturer's invoice on a regular basis, which in turn could lead to the serious disruption of trade. His authorities were of the view that it was not the long-term solution for any administration to include in its customs legislation provisions which specifically identified documents relating to customs valuation; documents which could then be requested in a systematic manner. His authorities reserved the right to come back to this issue at a later date.

27. The representative of Sweden, on behalf of the Nordic countries, stated that their authorities shared the views expressed by the representatives of the United States and the European Communities. The Swedish authorities had had contacts with importers and exporters which had served to reconfirm these concerns. More specifically, it had been emphasized that this regulation could, for example, cause considerable problems for trading houses operating on a bona fide basis. Moreover, in the longer-term perspective, provisions of this kind could serve to undermine the credibility of the Agreement. He wished to know

whether India had taken any measures as regarded the practical application of this provision vis-à-vis its own customs houses? He expressed his authorities' wish to keep the matter under review and reserved the right to revert to this agenda item at a future date.

28. The representative of Australia said that while his delegation recognized that the new notification no longer made it mandatory for the importer to produce the manufacturer's invoice when the goods were imported through an intermediary, the customs officer nevertheless had the discretion to request such an invoice if he had suspicions as to the truth or accuracy of the declared value. The new notification had in fact not addressed the question of the relevance or the legitimacy of the manufacturer's invoice in determining customs value. At the previous meeting, in response to a question as to whether an importer had the "option" of providing alternative forms of information, the Indian delegation had answered that alternative forms of information was a "possibility". However, this response needed some clarification in view of the difference between a "possibility" and an "option".

29. The representative of India said that his authorities, although of the view that the notification dated 3 August 1990 was well within the scope of India's obligations under the Agreement, had, due to the concerns voiced at the Committee meeting of 7 February 1991, reacted by advising their customs officers to be cautious in their application of these provisions and by amending this notification. The new amendment which was notified on 1 October 1991 and which was circulated to Committee members on 27 November 1991 no longer made it mandatory for the importer to produce the manufacturer's invoice when the goods were imported through an intermediary.

30. He pointed out that Article 17 of the Agreement authorized local customs officers to request any document or information that they felt was necessary to substantiate the veracity of a declared value. Rule 10 of the Customs Valuation Rules, 1988 of India that existed prior to the

notification of 3 August 1990 and which was consistent with the provisions of the Agreement provided that the "importer or his agent shall furnish: (b) any other statement, information or document as considered necessary by the proper officer of customs for determination of the value of imported goods under these rules". The sentence "any other statement, information or document" was comprehensive and authorized the proper officer to ask for any document, including the manufacturer's invoice, in cases where the goods had been imported through an intermediary. As the new amendment was in essence based on the legislation that had existed prior to the notification of 3 August 1990, except for a reference to the manufacturer's invoice, his authorities considered the amended legislation to be consistent with the Agreement.

31. In response to the questions raised by the representatives of Australia and the United States, the representative of India stated that specific mention of a document did not give it any particular status, and it certainly did not make the document the key to the acceptance or the rejection of the transaction value. The importer had the possibility of providing other documents to substantiate the claim that the declared value was the correct value. Reference had been made to the document to give customs officials the necessary flexibility to request the document. As to its relevance for valuation purposes, the possibility had to be given to customs officials on the spot to decide whether such a document was necessary or not; such a decision would depend on the circumstances of the case under consideration.

32. The representative of India, in response to the questions raised by the representatives of the European Communities and the Nordic countries, said that the application of this provision had neither resulted in the disruption of trade nor had it caused the credibility of the Agreement to be undermined. It was important to note that the amended notification had become effective as of 1 October 1991 and to date, no problems or complaints had been notified to the Indian authorities. This was due firstly, to the conformity of the amended legislation with the provisions of the Agreement and secondly, to the non-application of this provision on a systematic or regular basis.

33. The Committee took note of the statements made, and agreed to conclude its examination of this amendment with the understanding that it be included in the agenda of a future meeting if requested by a party.

(iii) Cyprus

34. The Chairman noted that at its meeting of 13 November 1991, the Committee had agreed to revert to this agenda item at its next meeting. The implementing legislation of Cyprus was contained in VAL/1/Add.26 and the replies by Cyprus to the checklist of issues was contained in VAL/2/Rev.2/Add.7.

35. The Committee agreed to conclude the examination of this legislation.

(iv) Argentina

36. The Chairman recalled that at its last meeting, the representative of Argentina had informed the Committee that the Government of Argentina had adopted laws, decrees and resolutions pertaining to the Agreement. Copies of those texts had been subsequently circulated in document VAL/1/Add.22/Suppl.2.

37. The representative of the European Communities stated that his authorities had not yet completed their examination of this legislation, and requested that this item be retained on the Committee's agenda.

38. The Committee took note of the information contained in document VAL/1/Add.22/Suppl.2 and of the statement made, and agreed to revert to this agenda item at its next meeting.

(v) Romania

39. The representative of Romania informed the Committee that in accordance with Article 25.2 of the Agreement, Romania had submitted supplementary legislation pertaining to customs valuation. Article 8 of

the Government Decision 673/1991 (published in the Official Gazette No. 221 of 2 November 1991) related to the rules on the determination of customs value. Copies of this Article would be circulated to Committee members for their consideration in the near future. Article 8 of this Decision stated that the customs value would be determined on the basis of the external price of the imported good to which would be added transport and handling costs, insurance costs and other supplementary charges, in accordance with Article 8.2 of the Agreement. In conformity with Article 9 of the Agreement, the conversion of the customs value into Romania's national currency would be carried out using the exchange rate established and communicated by the central bank of Romania every Friday. This exchange rate would remain valid for a week.

40. The Committee took note of the statement made.

41. The Committee agreed to revert to the implementing legislations of Argentina and Romania at its next meeting, and to that of Malawi once Malawi's responses to the checklist of issues had been received.

E. Other Business

(i) Linguistic consistency

42. The Chairman recalled that Australia had submitted written comments on the question of the linguistic consistency between the English, French and Spanish texts of the introductory sub-paragraph of Article 8.1 (b) of the Agreement. These comments had been circulated in document VAL/W/53.

43. The observer from the CCC stated that he strongly supported the views of the Australian delegation on this issue, as reflected in document VAL/W/53. The specific wordings used in the provisions under Article 8.1 (b) regarding the treatment of the four categories of assists made quite clear the relationship of each type of input to the imported product.

44. The Committee took note of the statement made.

(ii) Derestriction of documents

45. The Chairman stated that the documents listed in VAL/W/54 had become derestricted as of 25 March 1992.

(iii) Date and agenda of the next meeting

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