

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

VAL/Spec/37

23 November 1992

Committee on Customs Valuation

DRAFT MINUTES OF THE MEETING OF 3 NOVEMBER 1992

Chairman: Mr. D. Shark (United States)

1. The Committee on Customs Valuation met on 3 November 1992.

2. The following agenda was adopted:

	<u>Page</u>
A. Report on the work of the Technical Committee	2
B. Information on implementation and administration of the Agreement:	8
(i) Argentina	8
(ii) Romania	9
(iii) European Communities	12
(iv) Zimbabwe	12
(v) Mexico	13
C. Technical Assistance	14
D. Twelfth Annual Review of the Implementation and Operation of the Agreement; Report (1992) to the CONTRACTING PARTIES	14
E. Other Business:	15
(i) Panel candidates for 1993	15
(ii) Date and agenda of the next meeting	15

A. Report on the work of the Technical Committee

3. 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-fourth session of the Technical Committee on Customs Valuation held from 19 to 23 October 1992. The report of the session had been circulated in CCC document 37.747.

4. In connection with intersessional developments, the Technical Committee had been informed that the Policy Commission and the Council had instructed the Secretariat at their last sessions in June 1992, to consider the feasibility of carrying out a study on the legislations, regulations and administrative practices of Members applying the Agreement and examine possibilities with respect to the establishment of a data base on valuation.

5. The Technical Committee had also been informed that the text of the Handbook on Customs Valuation Controls had been produced in its final format as a loose-leaf compendium in English, French and Spanish. One copy had been sent free of charge to each CCC Member.

6. The Directorate of Valuation had also prepared a leaflet entitled "A Universal Customs Valuation System" which incorporated the principal arguments on the GATT Valuation Agreement. This document was intended to help CCC Members make an informed decision regarding accession to the Agreement.

7. With respect to other developments, the Technical Committee had been informed that under the CCC's Fellowship Programme, presentations had been given by officials of the Secretariat on existing international valuation systems, on the work of the two Sub-Committees and on Directorate activities. Fellows, particularly interested in valuation problems, had worked at the Directorate from 25 May to 19 June 1992 in French (Brazil), and from 29 September to 23 October 1992 in English (Indonesia and Nigeria).

8. The Technical Committee had also been informed that the Directorate had received representatives from the pharmaceutical industry who had expressed their intention to submit a number of practical cases concerning royalties and licence fees.

9. On the subject 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.

10. From 14 to 23 September 1992, the Twelfth Training Course on the GATT Valuation Agreement had been held in Marmaris, Turkey, followed by an Instructional Techniques Training Programme from 24 September to 2 October 1992. Twenty-six participants from Azerbaijan, Kazakhstan, Kirghizstan, Poland, Turkey, Ukraine and Uzbekistan had taken part in this course. It was the first Council training programme for these new republics as well as the first combined Training Course and Instructional Techniques Programme. The programmes had been conducted by three instructors from the Valuation Directorate and one from the Danish Administration.

11. In addition, a member of the Valuation Directorate had given presentations comparing the Brussels Definition of Value (BDV) with the GATT Valuation Agreement to fifteen African trainees taking part in a long-term training programme given by the Belgian Customs Administration.

12. The Technical Committee had also been informed that the number of requests for training received by the Secretariat had increased significantly. Three new programmes for technical assistance had already been planned for the next few months in Mali, Morocco and Indonesia.

13. With regard to technical issues in respect of which an instrument had been adopted, the observer from the CCC stated that subject to minor spelling amendments, the Technical Committee had adopted a draft commentary on the relationship between Articles 8.1(b)(ii) and 8.1(b)(iv)

of the Agreement. This commentary indicated that the value of the category of assists covered by Article 8.1(b)(ii), was determined on the basis of the cost of acquisition or of production. Therefore, in accordance with generally accepted accounting principles, the cost of any design work would be included in that value, and there was no exemption possible for design work undertaken in the country of importation.

14. With respect to technical issues that had been removed from the agenda, the observer from the CCC reported that after careful consideration of the draft commentary prepared by the Secretariat, the Technical Committee had not been able to reach a consensus on the definition of royalties and licence fees. Therefore, the Committee's discussion would be noted in Part I of the conspectus and the examination discontinued.

15. A case study concerning the practical application of Article 5 of the Agreement had been intended to illustrate the use of the deductive value method in the light of commentary 15.1. At its twenty-third session, the Technical Committee had decided to move that item from Part III of the conspectus of technical valuation questions to Part II, and to include it in the programme of work for the following session. But after careful consideration at its twenty-fourth session, the Technical Committee had decided to reassign the draft case study to Part III of the conspectus; it had been felt that commentary 15.1 would suffice.

16. 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:

- Application of Article 8.1(c). In its process of drawing up advisory opinions which illustrated the application of the terms "related to the imported goods" and "made as a condition of sale" when dealing with royalties and licence fees, the Technical Committee had continued its examination of the

examples forwarded by administrations. With the exception of draft advisory opinion 4.9 in respect of which no substantive comments had been made, the Technical Committee had instructed the Secretariat to refine the other advisory opinions by further clarifying the facts pertaining to some of the examples. Such an exercise would make clearer the reasons why the payments were or were not "related to the goods" and "made as a condition of sale", which in turn would help determine their dutiability. The Technical Committee had also decided to withhold its final approval of advisory opinion 4.9, pending the examination of all new draft advisory opinions in order to ensure a balanced approach.

- Application of the price actually paid or payable. The Technical Committee had invited the Secretariat to redraft the case study, taking into account the suggestions made to clarify and simplify the document. The Technical Committee had decided to review the latest version at its next session.
- 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 submitted by the Secretariat on this matter. The Technical Committee had made substantial amendments on the basis of which the Secretariat would present a revised document for the Technical Committee's consideration at the next session. The Technical Committee had also decided that the examples forwarded by administrations and contained in Annex II would be included in the report for the use of the Members.
- Application of Article 1.1(b) and Article 8.1(c). The Secretariat had prepared, as instructed by the Technical Committee, a draft case study indicating the proper valuation treatment under the Agreement of certain tobaccos and tobacco related products, imported into a country. In addition, those

imports were subject to royalty and licencing agreements and counter purchase operations. After careful consideration of the cases on a paragraph-by-paragraph basis, the Technical Committee had decided to postpone its decision until the next session. It had instructed the Secretariat to refine the arguments put forward in respect of key points such as the influence of the relationship on the negotiated prices and the condition or consideration for which a value can or cannot be determined, and to redraft the document accordingly.

17. Continuing his report, the observer from the CCC said that the following questions had been raised during the intersession:

- Study on legislations, regulations and administrative practices.
At its last session, the Policy Commission had instructed the Secretariat to study the feasibility of conducting a comparative study on the legislations of the Signatories to the GATT Valuation Agreement in order to determine how to accommodate the concerns of developing countries regarding loss of revenue. The views expressed within the Committee had revealed a consensus that the proposed study be further examined on the condition that the scope be well defined. The Secretariat had been instructed to prepare a draft "questionnaire" to be commented on by Signatories and Observers during the intersession. The Committee had decided to review this document at its next meeting.
- Valuation data base. During the course of several past sessions of the Council including the last one, Members had been signalling the need for the Secretariat to examine the possibility of establishing a valuation data base. However, not enough support had been expressed in the Technical Committee at this stage to undertake such work.

18. In respect of the programme of future work, the Technical Committee had decided to include the following specific technical questions:

- advisory opinions on the application of Article 8.1(c);
- a case study on the application "of price actually paid or payable";
- a commentary on the scope of the expression "right to reproduce the imported goods" within the meaning of the Interpretative Note to Article 8.1(c);
- a case study on the application of Articles 1.1(b) and 8.1(c);
- the conspectus;
- questions raised during the intersession.

19. The Technical Committee had also accepted a proposal from the delegate of Australia to include an item on "Correlation between Articles 8.1(c) and 8.1(b)" of the Agreement in its programme of future work. This proposal had originated from the Secretariat's conclusion in respect of the draft advisory opinion 4.8 which was currently under examination in the Technical Committee. The Secretariat had considered a situation where an importer, following the acquisition of a trademark from a licence holder on payment of the royalty, had made the trademark available to the manufacturer free-of-charge. The question had been raised whether the services qualified as dutiable assists under Article 8.1(b)(iv). The Secretariat had been requested to prepare an information document on this matter for the next session of the Technical Committee.

20. Under other business the observer from the CCC recalled that the Director of Valuation had invited all administrations to send their comments and suggestions concerning his proposal that delegates might present one or two papers on a valuation-related topic under this agenda

item. Comments that had been received by the Secretariat, as well as the views that had been expressed during the session, had indicated sufficient support for the Director's proposal. The Technical Committee had decided that the papers would not impinge upon the time available for technical questions, and that there was no need to annex texts of this type to the report. The Technical Committee had decided to choose the topics during its twenty-fifth session with the intention of providing the first papers at its twenty-sixth session.

21. The Technical Committee's twenty-fifth session would take place from 29 March to 2 April 1993.

22. 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.

B. Information on Implementation and Administration of the Agreement

(i) Argentina

23. The Chairman recalled that at its meeting of 14 May 1992, the Committee had agreed to revert to this agenda item at its next meeting. The texts of the various decrees, laws and regulations had been circulated in document VAL/1/Add.22/Suppl.2.

24. The representative of the United States requested the Secretariat to translate this document into English, and also asked that this item be retained on the agenda of the Committee's next meeting.

25. The representative of the European Communities stated that his delegation would support the retention of this legislation for further review at the Committee's next meeting. His authorities had certain questions with respect to Annexes 4 and 6 which dealt with related parties, and Annex 10 which concerned the definitions of identical and similar goods. His authorities intended to submit these questions in writing to the delegation of Argentina.

26. The Chairman stated that the English translation of the document VAL/1/Add.22/Suppl.2 would be undertaken by the Secretariat. He encouraged delegations, to the extent possible, to submit written questions to concerned delegations in advance of meetings, so as to enable those delegations to prepare themselves. To this effect, he urged delegations having questions on implementing legislations currently under examination or any other legislations which might be notified before the Committee's next meeting, to provide such questions in writing to the concerned delegations with copies to the Secretariat before 15 January 1993.

27. The Committee took note of the statements made and agreed to revert to this agenda item at its next meeting.

(ii) Romania

28. The Chairman recalled that at the last meeting of the Committee, the representative of Romania had informed the Committee that supplementary legislation pertaining to customs valuation had been submitted. Copies of this legislation had been subsequently circulated in document VAL/1/Add.8/Suppl.2.

29. The representative of the United States stated that her authorities had reviewed this document in conjunction with the legislation submitted by Romania in May 1981, and had also taken note of the description provided by the Romanian delegation of this supplementary legislation at the Committee meeting of May 1992. This review had led her authorities to wonder why this supplementary legislation was necessary and what the Romanian authorities hoped to achieve by introducing it? On a more specific level, her authorities were concerned by the usage in this text of the term "external price" rather than the "price actually paid or payable" which was used in Article 1 of the Agreement. The reference to "normal methodology" for the calculation of transport costs, when such costs were unavailable either because they had not been included in the invoice or because the documents containing these costs had not been

provided, was also the source of some concern. Her authorities would be interested to know what the Romanian Government meant by "normal methodology".

30. The representative of Sweden stated that his authorities agreed with the comments made by the United States. His authorities were of the view that the "normal methodology" used by the Romanian authorities to calculate transport costs, which were unavailable, might be incompatible with Article 8.3 of the Agreement. This Article stated that "Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data". In contrast, the Romanian legislation set out a general rule with respect to the calculation of such costs, which consisted of the application of a percentage to the "external price".

31. The representative of New Zealand stated that in view of the recent circulation of this document, his authorities had been unable to complete their examination of this legislation. He requested that this item be retained on the Committee's agenda.

32. The representative of Romania informed the Committee that the new Romanian Customs Tariff, which had been elaborated and adopted by the Government in 1990, had been applied as of 1 November 1992. The Government Decision which had given effect to this new Customs Tariff contained an Article on customs valuation. This Article, which had been notified to the Committee and circulated in document VAL/1/Add.8/Suppl.2, could not be considered a supplementary piece of legislation. In fact, it replaced the legislation that had been applied in Romania's former centrally-planned economy. The general purpose of this Article was to provide an objective basis for the determination of customs value, and also to establish a link with Romania's foreign trade statistics. The new regulation established the cost-insurance-freight (cif) price of the imported good as the basis of customs valuation. Such a price would be determined on the basis of invoices and other documents which might indicate transport, handling, insurance or any other relevant charges. His Government had taken note of

the point raised by the United States regarding usage of the term "external price". However, since the customs value of an imported good was based on the invoice drawn up by the exporter, the general understanding was that the "external price" referred to the price actually paid or payable. In respect of the methodology to be used in case of unavailability of transport, handling and insurance costs, he stressed that reference was made in the Article to "prescribed rules" and not to "normal methodology". In the case where the invoice price did not include such costs or where the importer did not have the relevant documents reflecting such charges, the Ministry of Economy and Finance and the Ministry of Trade and Tourism could determine, using certain prescribed rules, a percentage of the "external price" to reflect such costs. Such rules had been established by the two Ministries on 28 October 1991 under Law No. 6100, in which it had been indicated that if transport, handling or insurance costs were not included in the invoice price, or if documents providing such information were unavailable, then 10 per cent of the "external price" would be representative of such costs. This method was objective as the point of departure for the calculation of such costs was the price indicated in the invoice which had been established by the exporter.

33. Referring to the methods of recourse available to the importer, he stated that such methods had been provided for in the same law which had given effect to the new Romanian Customs Tariff. If an importer was not satisfied with a decision reached on the customs value of the imported merchandise, he could appeal in the first instance to the Head of Customs where the value had initially been established, but this had to be done within thirty days of the decision. If the ruling by the Head of Customs was unsatisfactory, the importer could within another thirty-day period appeal to the Central Customs Administration. In the event of an unsatisfactory finding by that body, the importer had the possibility of taking his appeal to court where the decision would be final.

34. The Committee took note of the statements made and agreed to return to this agenda item at its next meeting.

(iii) European Communities

35. The Chairman stated that since the last meeting of the Committee, supplementary legislation had been submitted by the European Communities. The information had been circulated in document VAL/1/Add.2/Suppl.12.

36. In response to a question raised by the representative of New Zealand, the representative of the European Communities stated that the time-limit regarding the supply of documents or information necessary for the determination of customs value, as referred to in Article 11a of the Commission regulation 558/91 of 7 March 1991, was one month.

37. The Committee took note of the statement made and agreed to conclude its examination of this legislation.

(iv) Zimbabwe

38. The representative of Zimbabwe recalled that the Committee, at its meeting of 7 February 1991, had decided to delay Zimbabwe's application of Articles 1.2(b)(iii) and 6 of the Agreement for a two year period beginning 1 January 1991. At the same meeting, it had been agreed that Zimbabwe would provide periodic progress reports on the steps taken to implement those Articles and that an initial progress report should be provided by 31 December 1991. In accordance with the above decision Zimbabwe, at the Committee meeting of 13 November 1991, had reported that the draft legislation to implement the Articles in question had been prepared and would be placed before the Zimbabwean Parliament. In addition, a copy of the draft legislation had been submitted to Committee members for their information. In the context of its second progress report, he stated that Zimbabwe would not be seeking a further extension of the delay in the application of these Articles. The legislation was currently before Parliament and it was expected to become law before 31 December 1992. As from that date, Zimbabwe would be implementing all the Articles of the Agreement.

39. The Committee took note of the statement made and expressed its appreciation at Zimbabwe's compliance with the time-limits and conditions set out in the decision.

(v) Mexico

40. The Chairman drew the Committee's attention to the notification made by Mexico, which was circulated in document VAL/1/Add.25/Suppl.1. He added that this notification concerned recent legislative amendments that had been made to Articles 48 to 59 of Mexico's Customs Law. He reminded delegations that Mexico had invoked Article 21.1 and was delaying the application of the provisions of the Agreement until 10 March 1993.

41. The representative of New Zealand requested the Secretariat to translate this document into English, and also asked that this item be retained on the Committee's agenda.

42. The representative of Mexico stated that while his Government had notified the Committee of recent reforms that had been introduced into Mexico's customs legislation in accordance with the provisions of Article 25 of the Agreement, this notification did not prejudice in any way Mexico's rights under Article 21 of the Agreement. He re-emphasized the fact that these were internal reforms of a unilateral nature and Mexico could, as was indicated on page 3 of the document VAL/W/56, delay the application of the provisions of the Agreement until March 1993, and those of the computed value method until March 1996.

43. The Chairman stated that the document VAL/1/Add.25/Suppl.1 would be translated into English by the Secretariat.

44. The Committee took note of the statements made and agreed to revert to this agenda item at the next meeting of the Committee.

C. Technical Assistance

45. The representative of Korea informed the Committee that in April 1992, his Government had organized a seminar on the GATT Valuation Agreement for customs officials from the ASEAN countries.

46. The Committee took note of the statement made and the most recent information concerning technical assistance which was contained in document VAL/W/29/Rev.7.

D. Twelfth annual review of the implementation and operation of the Agreement; Report (1992) to the CONTRACTING PARTIES

47. The Committee conducted its annual review of the implementation and operation of the Agreement on the basis of a Secretariat background note VAL/W/56.

48. In response to a question raised by the representative of Romania, the Chairman stated that Annex I of the document VAL/W/56 was not intended to provide references to legislations in force in a country at a given time. Instead, it served as a record of all the notifications made by Parties to the Committee in accordance with Article 25 of the Agreement.

49. In response to a question raised by the observer from the CCC, the Chairman stated that at the first meeting of this Committee, it had been agreed that due to the special responsibilities and functions assigned to it under the Agreement, the Customs Co-operation Council would be accorded permanent observer status. Invitations to other international organizations, which had expressed an interest in following the work of the Committee, would be issued if no Party objected and on a meeting-by-meeting basis. Consequently, on receiving no objections from the members of the Committee, the IMF and UNCTAD had been invited to the present meeting.

50. The Committee agreed that the Secretariat issue a revised document in the VAL/- series to take account of the comments made during that review, and the work of the Committee at the present meeting.

51. The Committee adopted its annual report to the CONTRACTING PARTIES.

E. Other Business

(i) Panel candidates for 1993

52. The Chairman recalled that in accordance with paragraph 2 of Annex III of the Agreement, Parties would be expected to nominate persons available for panel service in 1993 or confirm existing nominations. He urged all Parties to communicate in written form the relevant information to the Secretariat as soon as possible.

(ii) Date and agenda of the next meeting

53. The representative of the United States said that it would be useful if the meeting of the Technical Committee in Brussels and that of the GATT Valuation Committee in Geneva could be juxtaposed.

54. The representative of the European Communities stated that his delegation could support the United States proposal. In the past his delegation had had problems with such an arrangement, but such concerns were not valid anymore.

55. The Chairman suggested that the next meeting of the GATT Committee be held the week after the meeting of the Technical Committee. The exact date would be set bearing in mind the time required by the CCC Secretariat to prepare its report. He also suggested that he fix the agenda of the next meeting in consultation with interested delegations. It was so agreed.